

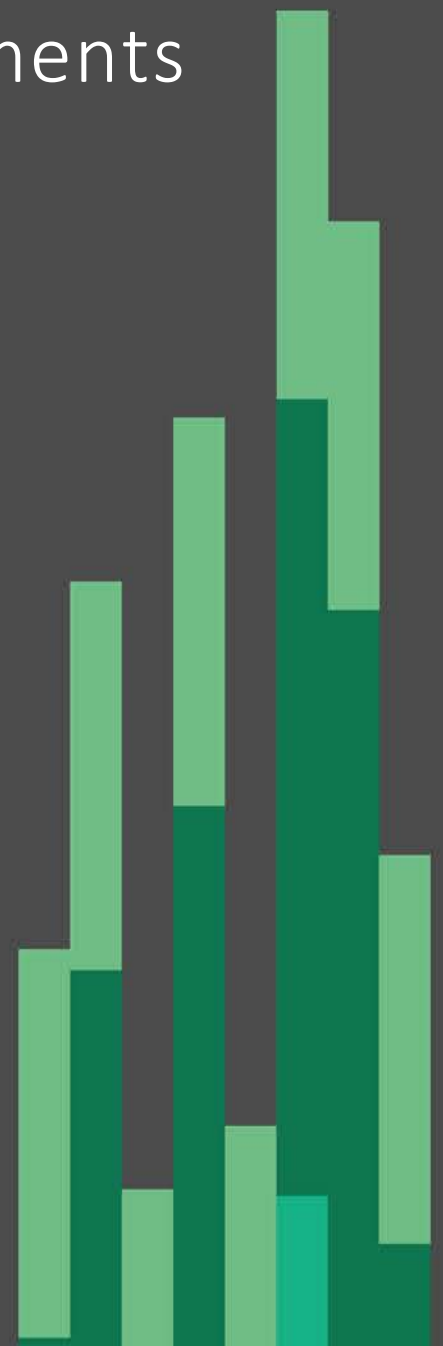
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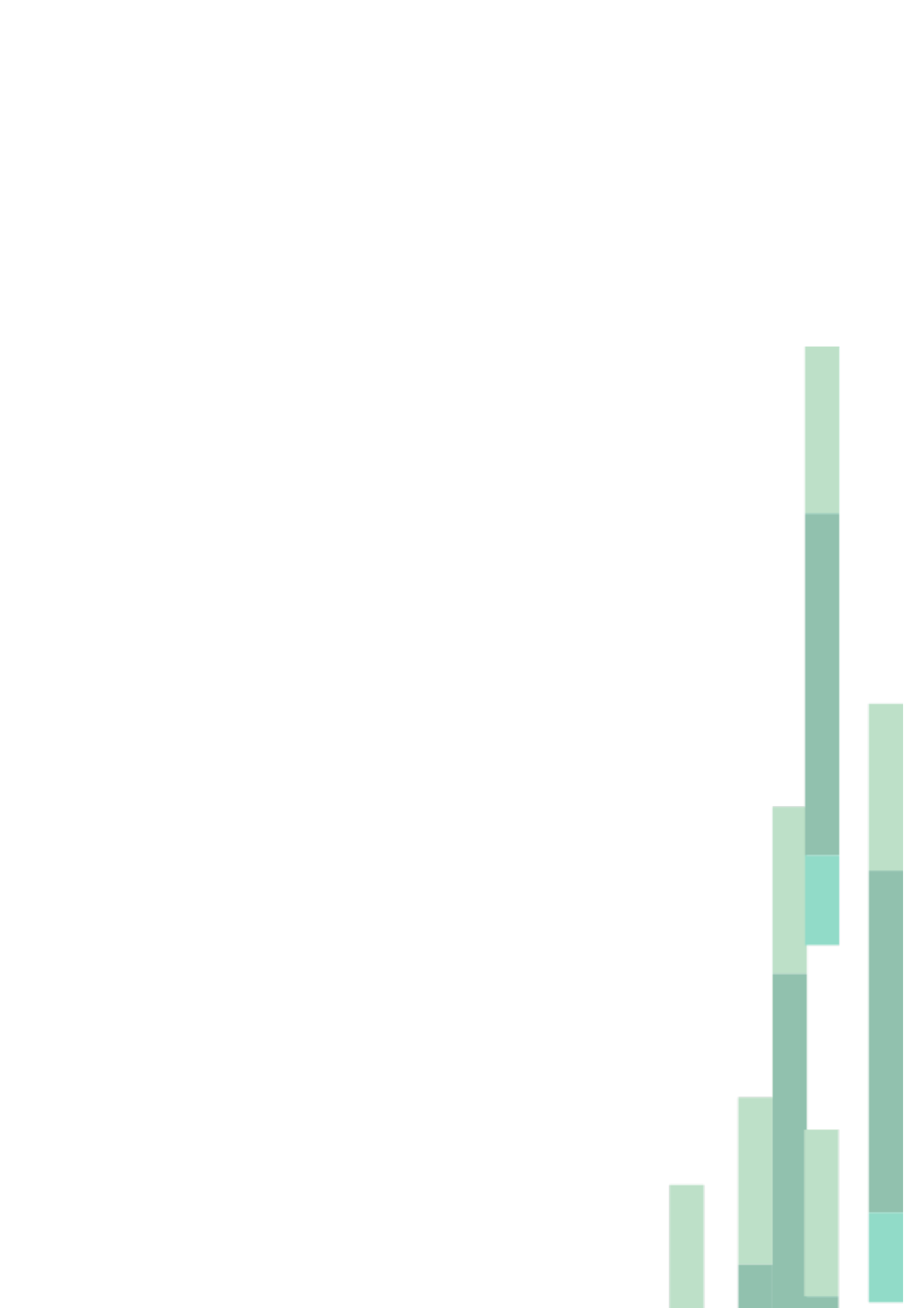
Victorian  
Independent  
Remuneration  
Tribunal

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Review and report on the  
superannuation arrangements  
for Members of the  
Parliament of Victoria

September 2020





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# Glossary



Term or abbreviation	Definition
2019 Determination	<i>Members of Parliament (Victoria) Determination 01/2019</i> . The Tribunal's first Determination of salaries and allowances for Victorian MPs.
ABS	Australian Bureau of Statistics
Accumulation scheme	An accumulation superannuation scheme provided to MPs under Part 4 of the PSAS Act. Applies to MPs elected since 2004.
Additional salary	Salary payable to MPs who are 'specified parliamentary office holders' as defined in s3 of the VIRTIPS Act.
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASP	Additional salary percentage. Used to calculate additional contributions and benefits for specified parliamentary office holders in the Existing Benefits Scheme and New Benefits Scheme.
ATO	Australian Taxation Office
AWOTE	Average Weekly Ordinary Time Earnings
Basic salary	Salary payable to all Victorian MPs.
BSP	Basic salary portion. A value used to calculate contributions and benefits for MPs in the Existing Benefits Scheme and New Benefits Scheme.
CCC	Concessional contributions cap
CPI	Consumer Price Index
Defined benefit schemes	The superannuation schemes provided to MPs under Part 3 of the PSAS Act. See 'Existing Benefits Scheme' and 'New Benefits Scheme'.
ESSSuper	Emergency Services and State Super. Administers the defined benefit schemes under Part 3 of the PSAS Act.
Existing Benefits Scheme	A defined benefit scheme provided to MPs under Part 3, Division 2 of the PSAS Act for MPs elected before 1996. Closed to new members in 1996.
Hazell Review	Hazell, M (CVO AM). <i>Independent Review of Victorian MPs' Salary Entitlements, Allowances and Other Arrangements</i> . Report prepared for the Department of Premier and Cabinet, Victoria, 2013.
MP	Member of the Parliament of Victoria
NCCC	Non-concessional contributions cap



Term or abbreviation	Definition
NER	New entrant rate. Represents the long-term cost (as a percentage of the basic salary portion) of providing the benefit payable to a hypothetical new entrant of the PCSF on voluntary exit. Used to calculate NTC.
New Benefits Scheme	A defined benefit scheme provided to MPs under Part 3, Division 3 of the PSAS Act for MPs elected after 1996. Closed to new members in 2004.
NTC	Notional taxed contributions. Represent the notional superannuation contributions made by the State of Victoria on behalf of MPs in the Existing Benefits Scheme and New Benefits Scheme.
p.a.	Per annum
Parliament	Parliament of Victoria
PCSF	Parliamentary Contributory Superannuation Fund. The defined benefit fund which applies to MPs in the Existing Benefits Scheme and New Benefits schemes.
Prescribed percentage	The rate of contributions payable to MPs in the accumulation scheme. Expressed as a percentage of the sum of basic and additional salary (15.5 per cent for the 2020-21 financial year).
Preservation age	The age at which an individual can ordinarily access their superannuation for the first time. Ranges from 55 to 60 depending on date of birth.
PSAS Act	<i>Parliamentary Salaries, Allowances and Superannuation Act 1968 (Vic)</i>
PSS Act	<i>Parliamentary Salaries and Superannuation Act 1968 (Vic)</i> — Renamed the PSAS Act in 2019
Resettlement allowance (or equivalent)	A payment made to eligible MPs in Australian jurisdictions (except for New South Wales and Tasmania) upon leaving Parliament. Eligibility criteria differs between jurisdictions.
Separation payment	A payment made to a Victorian MP, who is not a member of a defined benefit scheme, upon leaving the Parliament for reasons other corrupt conduct or wilful breach of duties.
SMSF	Self-managed superannuation fund
Specified parliamentary office holder	Refers to an MP who holds a 'specified parliamentary office' under s3 of the VIRTIPS Act.
Superannuation Guarantee (SG)	The minimum rate of employer superannuation contributions, as specified in the <i>Superannuation Guarantee (Administration Act) 1992 (Cth)</i> . Expressed as a percentage of ordinary time earnings (9.5 per cent for the 2020-21 financial year).
Tribunal	Victorian Independent Remuneration Tribunal
VIRTIPS Act	<i>Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019 (Vic)</i>

# Executive Summary



Superannuation arrangements for existing and former Members of the Parliament of Victoria (MPs) largely depend on the date they first entered Parliament.

Until late 2004 MPs were members of defined benefit superannuation schemes. In 2004 these defined benefit schemes were closed to new members and replaced with an accumulation superannuation scheme. Existing and former members of the defined benefit schemes retained their entitlements when the schemes were closed. From late 2004 new MPs were members of the accumulation scheme.

Part 3 of the *Parliamentary Salaries, Allowances and Superannuation Act 1968* (Vic) (PSAS Act) provides the rules for the defined benefit schemes and Part 4 of the PSAS Act provides the rules for the accumulation scheme.

Seventeen existing MPs are members of defined benefit schemes and all other existing MPs are members of the accumulation scheme.

The Victorian Independent Remuneration Tribunal (Tribunal) was tasked under section 39 of the *Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019* (Vic) (VIRTIPS Act) with reviewing and reporting on the superannuation arrangements for MPs, including on potential inequalities and irregularities between the arrangements. In conducting the review, the Tribunal was required not to consider any option that would result in an existing or former MP being in a less favourable position overall (s39(2)).

As part of the review, the Tribunal published an Issues Paper in May 2020 and sought submissions from affected or interested persons or parties. The Tribunal received three submissions and also consulted with a consultative committee comprised of MPs from across the Parliament of Victoria (Parliament).

The Tribunal considered:

- the superannuation arrangements for Victorian MPs, including their history, the nature of the defined benefit schemes (the Existing Benefits Scheme which was closed to new members in July 1996 and the New Benefits Scheme which was closed to new members in November 2004) and the accumulation



scheme, the contributions required to be made to those schemes and their respective superannuation payments

- the superannuation arrangements for other Australians, including MPs in other jurisdictions and employees in the public and private sectors
- the qualitative and quantitative differences between the superannuation schemes for Victorian MPs and the potential inequalities and irregularities between the schemes.

Further, actuarial modelling on the quantitative differences between the schemes shows that in general the New Benefits Scheme provides an MP with a significantly greater superannuation benefit than the accumulation scheme.

The Tribunal considered several options to address the inequalities arising from the significant qualitative and quantitative differences between the superannuation schemes for MPs. These options included increasing the superannuation contributions made for MPs in the accumulation scheme, opening or re-opening defined benefit schemes to existing and future MPs, increasing the separation payment for MPs in the accumulation scheme and compensating MPs in the accumulation scheme for the difference between expected superannuation benefits under each scheme when they leave the Parliament.

The Tribunal considers that it would be out of step with superannuation arrangements in the broader economy, including for MPs in other jurisdictions and the Victorian public sector, and with community standards to:

- open (or re-open) a defined benefit scheme for MPs not currently entitled to such a scheme; or
- increase the superannuation benefits of MPs in the accumulation scheme above the benefits they already receive; or
- increase the separation payment for MPs in the accumulation scheme.

On this basis, the Tribunal recommends that there be no changes to the superannuation arrangements for Victorian MPs at this time, notwithstanding the inequalities between the schemes.

Nonetheless, the Tribunal recognised that some MPs may still face the risk of inadequate retirement income, if they lose their seat early on in their parliamentary careers and are unable to accumulate sufficient superannuation contributions by other means. Enhanced transitional support could help existing and former MPs in this regard by assisting them in finding further employment.



The Tribunal has made recommendations that such enhanced transitional support be funded by the State and developed in consultation with key stakeholders.

The Tribunal also considered potential irregularities in relation to:

- the calculation of, and indexation arrangements for, the basic salary portion (BSP)
- the interaction of Commonwealth taxation legislation with the MP superannuation schemes, in particular the impact of the concessional contributions cap on MPs in the accumulation scheme and the effect of superannuation balance limits on MPs in the New Benefits Scheme.

However, the potential irregularities relating to the BSP were evident when the Tribunal made its Determination on the BSP in 2019 (*Members of Parliament (Victoria) Determination 01/2019*) and there were no submissions suggesting changes to existing arrangements to address the potential irregularities arising from taxation, making the necessity and effect of options to deal with them uncertain. The Tribunal has also recommended that there be no changes to the superannuation arrangements for MPs at this time, in relation to these irregularities.

The findings and conclusions of the Tribunal, together with the recommendations in the Tribunal's report, are more broadly set out below.

## Superannuation arrangements for Victorian MPs

Existing and former Victorian MPs are members of either a defined benefit scheme or an accumulation scheme.

### Defined benefit schemes

A defined benefit scheme guarantees its members a defined (i.e. fixed) benefit upon retirement, such as a pension or lump sum.

Part 3 of the PSAS Act provides the rules for the two defined benefit schemes for MPs:

- an Existing Benefits Scheme, closed to new members on 2 July 1996
- a New Benefits Scheme, closed to new members on 10 November 2004.

The Tribunal focused its analysis on the New Benefits Scheme, as this scheme covers all 17 existing MPs with defined benefit entitlements (i.e. there are no existing MPs who are members of the Existing Benefits Scheme).

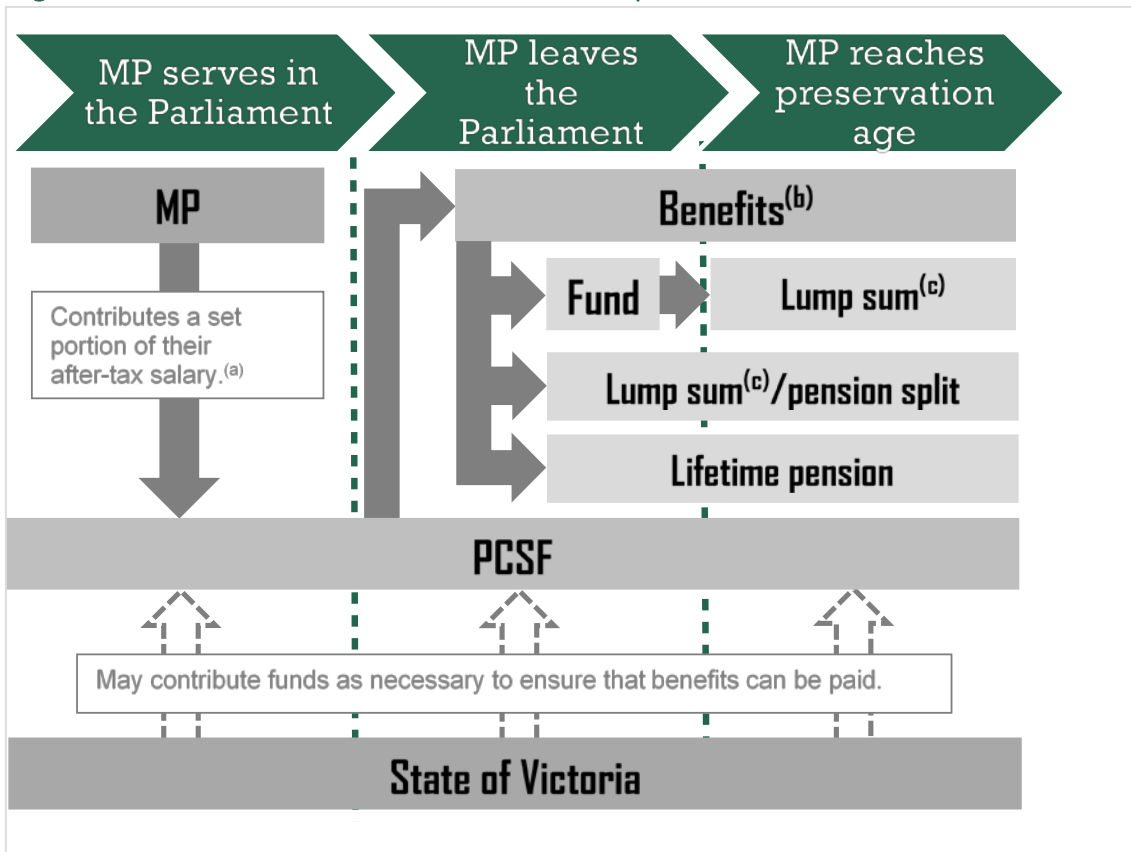
MPs in the New Benefits Scheme are required to make after-tax contributions from their parliamentary salary to the Parliamentary Contributory Superannuation Fund (PCSF) in exchange for the defined benefit. All eligible MPs are required to contribute an amount equal to 11.5 per cent of the BSP. Specified parliamentary office holders that receive an additional salary for their position are required to make additional contributions to the PCSF.

The PCSF is administered by Emergency Services and State Super (ESSSuper), which pools and invests member contributions to pay the superannuation benefits of members of the schemes.

Subject to meeting eligibility requirements, former MPs in a defined benefit scheme can begin receiving a pension after they leave the Parliament, which is revertible to their partner or eligible children upon an MP's death. The pensions of eligible former MPs in the New Benefits Scheme are calculated as a percentage of the current BSP. The minimum value of the pension for an MP who does not hold any specified parliamentary offices is 50 per cent of the BSP (as at 30 June 2020, \$84,450.50 per annum (p.a.)), and the maximum is 75 per cent of the BSP (as at 30 June 2020, \$126,676 p.a.). MPs who held a specified parliamentary office also receive an additional pension based on the years they held that office.

An MP may also elect to commute all or part of their pension into a lump sum. MPs who are not eligible for a pension receive a lump sum payment. Lump sums are transferred into an accumulation fund and can be accessed when the MP reaches their preservation age and retires.

Figure 1: how the MP defined benefit schemes operate



Notes: (a) MPs are required to contribute from their basic salary for the first 20.5 years of service, and from their additional salary (if any) during all years of service. For an explanation of how contributions are calculated, see appendix B. (b) Eligible MPs can begin receiving a pension after they leave the Parliament, regardless of their age. They may also elect to commute all or part of their pension into a lump sum. MPs who are not eligible for a pension receive a lump sum. (c) Lump sums are transferred into an accumulation fund when the MP leaves the Parliament, and can be accessed when the MP reaches their preservation age (ranges from 55 to 60 years depending on their date of birth) and retires. Once in the accumulation fund, the MP may choose to access the lump sum as an income stream or use it to purchase an annuity (subject to Commonwealth preservation rules).

## Accumulation scheme

MPs elected from 10 November 2004 are members of the accumulation scheme.

Part 4 of the PSAS Act provides the rules for the accumulation scheme. MPs are paid contributions by the State into an accumulation fund of their choice. The State is required to make contributions that are equal to the greater of:

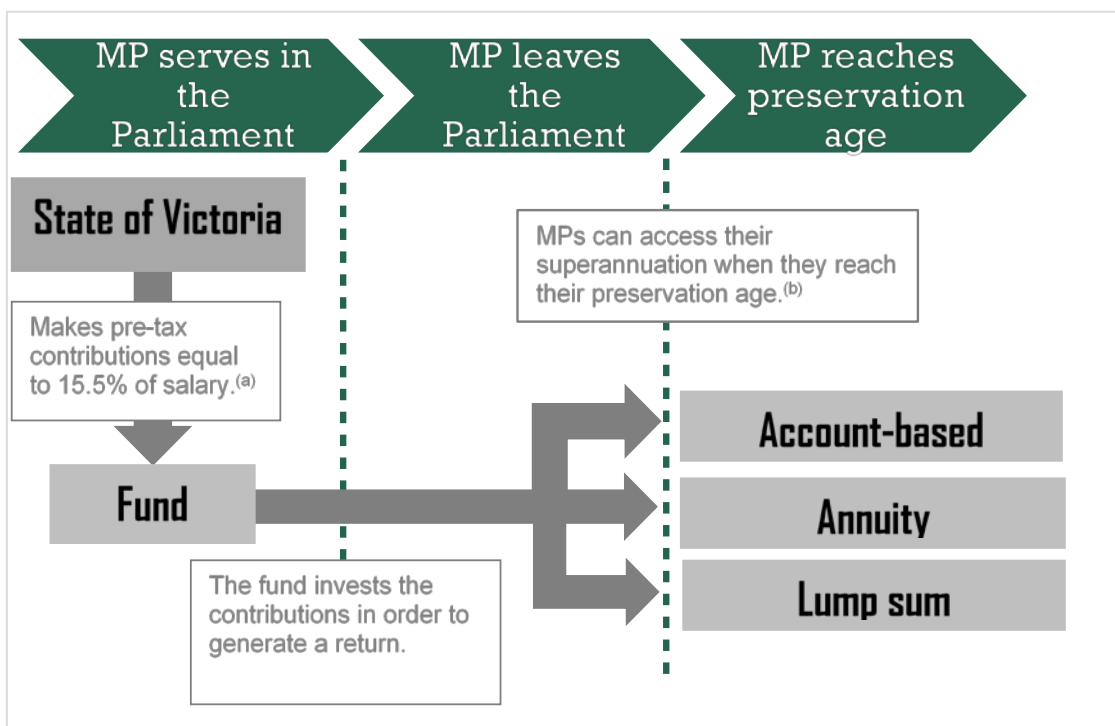
- the 'prescribed percentage' (currently 15.5 per cent) of the basic salary and additional salary (if any) (the prescribed percentage contribution amount)
- the minimum amount necessary to avoid a Superannuation Guarantee (SG) shortfall under Commonwealth law (the shortfall contribution amount).

The prescribed percentage contribution amount typically exceeds the shortfall contribution amount.

The superannuation balance, including investment returns and any additional contributions, are accessible as an account-based pension, annuity or lump sum once the MP (or former MP) reaches their preservation age (which ranges from 55-60 years depending on the MP’s date of birth).

Former MPs who are not members of the defined benefit schemes are also eligible to receive a separation payment upon leaving the Parliament, to facilitate the completion of their parliamentary and electorate business and support them as they transition from working as an MP. The separation payment is equal to 3 months’ basic salary (currently approximately \$45,000) where an MP has served one term, and 6 months’ basic salary (currently approximately \$91,000) where an MP has served two or more terms. This payment aims in part to bridge the gap between the superannuation arrangements of MPs in the defined benefit schemes and those in the accumulation scheme.

**Figure 2: how the accumulation scheme operates**



Notes: (a) Under s31 of the PSAS Act, MPs can elect to limit the amount of contributions they receive to prevent them exceeding the concessional contributions cap. (b) In some circumstances, an MP may be able to access their superannuation prior to reaching their preservation age (e.g. due to severe financial hardship or ill-health).

## Superannuation arrangements for other Australians

In reviewing the superannuation arrangements for MPs, the Tribunal considered the superannuation entitlements provided to other Australians. This assisted the Tribunal to establish a community standard by which to assess MP superannuation arrangements.

Compulsory superannuation is one pillar of the Australian Government's retirement income policy, which aims to allow older Australians to achieve adequate income in retirement. The Australian Government established the SG in 1992, with employers required to make superannuation contributions on behalf of their employees. The current SG rate is 9.5 per cent of ordinary time earnings.

Around 70 per cent of Australians now hold a superannuation account, with most having an accumulation-type superannuation account. Only 4 per cent of superannuation accounts (excluding self-managed superannuation funds) are wholly defined benefit in nature or have a defined benefit component.

Most Australians do not have enough superannuation to solely rely on those funds in retirement, and the main source of income of retirees is the Age Pension. The Association of Superannuation Funds of Australia in 2018 estimated — based on the assumption that retirees also receive a part Age Pension — that a single person would require \$545,000 in savings at retirement to have a comfortable lifestyle, while a couple would require \$640,000, assuming the retirees also received a part Age Pension. In contrast, the median superannuation account balance of Australians aged 65-74 in 2017-18 was \$225,700.

Until the mid-1990s, MPs and Victorian public servants were covered by defined benefit schemes. Most Victorian public sector defined benefit schemes were closed to new members due to the financial burden on the State of maintaining them, with new employees required to instead participate in an accumulation scheme. Public sector employees covered by an accumulation scheme are entitled to the SG rate of 9.5 per cent. Defined benefit schemes remain open to a limited number of public sector roles, in particular, the ESSSuper defined benefit fund remains open to operational employees of emergency services entities. Some former judges may be eligible for a judicial pension.

In 2004, the Commonwealth Government closed its MP defined benefit scheme to new members and established an accumulation scheme. Other jurisdictions,

including Victoria, followed soon after. At the time, the rationale given for moving to an accumulation scheme for Victorian MPs was to bring superannuation arrangements into line with those available to the broader community.

Following a review of Victorian MP entitlements in 2013, superannuation contributions for MPs in the accumulation scheme were increased from 9 per cent to the SG rate plus 6 per cent. The contribution rate is now 15.5 per cent, well above the rate applicable to other Australian workers. Further, increases to the SG percentage have been legislated by the Commonwealth Government.

Of all Australian jurisdictions, Victoria's accumulation scheme provides MPs with the highest contribution in percentage terms and the third highest in dollar terms, behind the Commonwealth and South Australia.

The Commonwealth and each of the states and territories (except for New South Wales and Tasmania) also provide a one-off payment to MPs who leave parliament in particular circumstances, similar to Victoria's separation payment for MPs. While the size of the payment in Victoria falls in the middle of the range provided by other Australian jurisdictions, Victoria has fewer eligibility requirements than most jurisdictions.

## Comparing Victorian MP superannuation schemes

The Tribunal compared the Victorian MP superannuation schemes from both qualitative and quantitative perspectives.

The Tribunal found three key qualitative differences between the schemes. In broad terms, two of these differences favour members of defined benefit schemes, while the other may favour members of the accumulation scheme:

- *The timing of when superannuation benefits can be accessed:* eligible members of defined benefit schemes start to receive their pension as soon as they leave the Parliament, whereas members of the accumulation scheme need to meet preservation age requirements.
- *Sources of uncertainty and risk:* eligible members of defined benefit schemes receive a guaranteed pension for the remainder of their and their partner's and eligible children's lives, whereas the superannuation benefit accrued by an MP in the accumulation scheme is subject to investment risk and may be insufficient to fund their retirement.

- *Flexibility*: members of an accumulation fund have relatively greater choice and control over their superannuation fund, including the option to set up a self-managed superannuation fund, the level of contributions they make, how their superannuation is invested, and how they access their superannuation benefits.

On balance, the Tribunal considered these differences place MPs in the defined benefit schemes at a significant advantage compared with their counterparts in the accumulation scheme.

The Tribunal commissioned actuarial analysis using industry standard methodologies and assumptions to model the quantitative differences between the New Benefits Scheme and the accumulation scheme (including the separation payment). The modelling involved a:

- *backward-looking approach*: estimating the total superannuation benefit of a hypothetical MP who was a member of either scheme and who served in the Parliament between 2004 and 2019
- *forward-looking approach*: estimating the total superannuation benefit of a hypothetical MP who was a member of either scheme and who served in the Parliament from 2020 and left the Parliament on a specified end date, for example, 2032.

The base case for the modelling was a representative MP who joined the Parliament at age 43 and served for 12 years, reflecting the average starting age and length of service of MPs who left the Parliament in the last 10 years. A range of other scenarios were also modelled, taking into account different starting ages, terms of service and whether an MP held a specified parliamentary office.

In general, the actuarial modelling showed that the New Benefits Scheme would provide an MP with a significantly greater superannuation benefit than the accumulation scheme. The relative difference is most pronounced once an MP has served for long enough to be eligible for a pension (8 years assuming involuntary exit from Parliament) and less pronounced where MPs serve for much longer periods.

For example, for the representative MP scenario (in June 2020 dollars):

- in the backward-looking approach, the estimated accumulation scheme benefit is around \$0.52 million, whereas the estimated the New Benefits Scheme lump sum benefit is around \$0.96 million (or around 84 per cent

higher) and the estimated New Benefits Scheme pension benefit is around \$2.34 million (or around 350 per cent higher)

- in the forward-looking approach, the estimated accumulation scheme benefit is around \$0.70 million, whereas the estimated New Benefits Scheme lump sum benefit is around \$1.09 million (or around 55 per cent higher) and the estimated New Benefits Scheme pension benefit is around \$2.96 million (or around 320 per cent higher).

The modelling suggests that changes to the accumulation scheme over time, in particular, the increase to the contribution rate in 2013 and the introduction of the resettlement allowance/separation payment, have helped to bridge the gap between the schemes.

The Tribunal has not included in this public report modelling results that could potentially identify the superannuation entitlements of individuals.

## **Potential inequalities**

The Tribunal noted the potential inequalities arising from the significant qualitative and quantitative differences between the superannuation schemes for Victorian MPs.

The Tribunal considered several options to address those inequalities, including increasing the superannuation contributions made for MPs in the accumulation scheme, opening or re-opening defined benefit schemes to existing and future MPs, increasing the separation payment for MPs subject to the accumulation scheme, and compensating MPs in the accumulation scheme for the difference between expected superannuation benefits under each scheme when they leave the Parliament.

In doing so the Tribunal recognised that MPs have a relatively unique role without access to many of the employment standards and conditions afforded to other workers and face the risk of losing their job at each election.

Nonetheless, the superannuation entitlements for Victorian MPs, including those in the accumulation scheme, compare favourably to those of MPs in other Australian jurisdictions, other Victorian public sector roles and Australians more generally.

The modelling conducted by the Tribunal indicates that a hypothetical MP who joins the Parliament in 2020 and serves for 12 years (without holding specified parliamentary offices) will leave the Parliament with approximately \$390,000 in



benefits in real (June 2020) terms from their parliamentary service alone, without making additional contributions. In comparison, in 2017-18 the median superannuation balance of Australians that were aged 65-74 was \$225,700.

Further, the 2013 increase in superannuation contributions for Victorian MPs in the accumulation scheme was in part provided to recognise that MPs do not receive accrued recreation and long service leave. The separation payment (and the former resettlement allowance) was also provided to assist MPs to re-establish themselves in professional or business life or the workforce. The separation payment is akin to the redundancy payments to which many workers are entitled on termination of their employment.

The Tribunal was also mindful of Victoria's current challenging economic and fiscal environment and outlook arising from the COVID-19 pandemic and that any option that fully addressed the quantitative differences between the New Benefits Scheme and accumulation scheme would come at a substantial cost to the State.

The Tribunal considers that it would be out of step with superannuation arrangements in the broader economy and with community standards to:

- open (or re-open) a defined benefit scheme for MPs not currently entitled to such a scheme; or
- increase the superannuation benefits of MPs above the entitlements they already receive; or
- increase the separation payment for MPs in the accumulation scheme.

For these reasons, the Tribunal has recommended that there be no changes made to the superannuation arrangements for Victorian MPs at this time, in relation to the inequalities between the schemes.

However, having recognised that some MPs might face the risk of inadequate retirement income, the Tribunal considers that enhanced transitional support might assist existing and former MPs in finding future employment and has made recommendations in this regard.

## **Potential irregularities**

The Tribunal considered potential irregularities with respect to the calculation of, and indexation arrangements for, the BSP.

The BSP was introduced by legislative changes made in 2019 as a mechanism for calculating contributions and pension entitlements for MPs in the defined benefit

schemes. The initial value of the BSP was set at \$168,901 p.a. by the Tribunal in its 2019 Determination, lower than the basic salary for MPs set by that Determination (\$182,413 p.a.). The BSP is indexed each financial year according to the greater of three formulae outlined in the PSAS Act and the 2019 Determination.

There is no sound basis for altering the calculation of the value of the BSP at this time. The indexation arrangements ensure the superannuation pension keeps pace with broad changes in community living standards as reflected by prices and wages, and the Parliament's intention when introducing the BSP. The data which should be used for each of the indexation formulae is that available as at 15 June each year. This could be clarified through guidance or by using legislation with consideration being given to whether regulations can be made under section 25 of the PSAS Act to clarify the matter. Accordingly, the Tribunal has recommended there be no changes to the superannuation arrangements for MPs at this time, relating to these potential irregularities.

The Tribunal also considered potential irregularities relating to the interaction of Commonwealth taxation legislation with the MP superannuation schemes, in particular the impact of the concessional contributions cap on MPs in the accumulation scheme and the effect of superannuation balance limits on MPs in the New Benefits Scheme.

Given that the Tribunal did not receive any submissions on changes for these potential irregularities and the uncertain effect of options to deal with them, the Tribunal recommends that there be no changes to the superannuation arrangements at this time to address them.

## Recommendations

The Tribunal recommends that:

- there be no changes to the superannuation arrangements for Victorian MPs at this time
- existing and former MPs be provided with enhanced transitional support funded by the State to assist them in finding further employment when they leave the Parliament. Such support could include, career or financial counselling, resume building, networking support and outplacement services
- key stakeholders, including the Presiding Officers of the Parliament, the Department of Parliamentary Services and the Victorian Parliamentary Former Members Association, are consulted on the enhanced transitional support needed to ensure a fit-for-purpose program of support is developed, appropriately funded and evaluated after an appropriate interval.



Warren McCann

*Chair*

Victorian Independent  
Remuneration Tribunal



The Honourable Jennifer  
Acton

*Member*

Victorian Independent  
Remuneration Tribunal




Barbara Belcher AM

*Member*

Victorian Independent  
Remuneration Tribunal

Date: Thursday, 17 September 2020

# 1 Introduction



The *Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019* (Vic) (VIRTIPS Act) requires the Victorian Independent Remuneration Tribunal (Tribunal) to inquire into and make Determinations in relation to:

- salaries and allowances for Members of the Parliament of Victoria (MPs)
- remuneration bands for executives employed in public service bodies
- remuneration bands for executives employed in prescribed public entities
- allowances provided to Mayors, Deputy Mayors and Councillors in local governments.

In performing its functions, the Tribunal must act independently and impartially and is not subject to the control or direction of any person, including the Minister (s5).

In 2019, the Tribunal undertook the first independent Determination of salaries and allowances for MPs. Superannuation contributions and benefits for MPs were indirectly affected by the Tribunal's Determination of the basic salary, additional salary for specified parliamentary office holders,<sup>1</sup> and the 'basic salary portion' (BSP), an amount used to determine pensions for the defined benefit schemes.

Under the VIRTIPS Act, the Tribunal is required to review and report on the superannuation arrangements for MPs under Parts 3 and 4 of the *Parliamentary Salaries, Allowances and Superannuation Act 1968* (Vic) (PSAS Act), including potential inequalities and irregularities between the superannuation arrangements (s39(1)). The Tribunal was required to complete its review and report on its findings by 20 September 2020.

This report presents the Tribunal's findings and recommendations from that review.

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<sup>1</sup> A specified parliamentary office holder is an MP who holds one or more of the additional offices listed in section 3 of the VIRTIPS Act — for example, Premier, Leader of the Opposition — and receives an additional salary for carrying out that role.

## 1.1 Scope

Existing and former MPs are members of the following superannuation schemes under Parts 3 and 4 of the PSAS Act:

- a defined benefit scheme known as the Existing Benefits Scheme, closed to new members on 2 July 1996 (Part 3, Division 2)
- a defined benefit scheme known as the New Benefits Scheme, closed to new members on 10 November 2004 (Part 3, Division 3)
- an accumulation scheme, open to new members from 10 November 2004 (Part 4).

Generally speaking, the MP superannuation schemes all have a similar overarching structure:

- MPs are members of a superannuation fund
- the State (and sometimes MPs) contributes money to the fund, which invests it on an MP's behalf
- the fund provides a financial benefit to the member following a pre-determined event (e.g. retirement).

### Defined benefit schemes

MPs in the defined benefit schemes are required to make after-tax contributions from their parliamentary salary to the Parliamentary Contributory Superannuation Fund (PCSF) in exchange for the defined benefit. Existing MPs are required to contribute 11.5 per cent of the BSP during their first 20.5 years of service. Specified parliamentary office holders who receive an additional salary are required to make additional contributions to the PCSF.

The PCSF is administered by Emergency Services and State Super (ESSSuper), which pools and invests member contributions to pay the superannuation benefits of members of the schemes.

Subject to meeting eligibility requirements, former MPs in the defined benefit schemes receive a pension. A reduced pension is payable to their partner or eligible children upon the MP's death.

## Accumulation scheme

MPs elected from 10 November 2004 are members of the accumulation scheme. MPs are paid contributions by the State into an accumulation fund of their choice. The State is required to make contributions that are equal to the greater of:

- the ‘prescribed percentage’ (currently 15.5 per cent) of the basic salary and additional salary (if any) (the prescribed percentage contribution amount)
- the minimum amount necessary to avoid a Superannuation Guarantee (SG) shortfall under Commonwealth law (the shortfall contribution amount).

The prescribed percentage contribution amount typically exceeds the shortfall contribution amount.

The superannuation balance, including investment returns and any additional contributions, are accessible once the MP (or former MP) reaches their preservation age (which ranges from 55-60 years depending on date of birth).

Upon leaving the Parliament of Victoria (Parliament), former MPs who are not members of the defined benefit schemes are eligible to receive a separation payment to facilitate the completion of their parliamentary and electorate business, and to support them as they transition from working as an MP.

This separation payment is equal to 3 months’ basic salary (\$45,603 for the 2020-21 financial year) where an MP has served for up to one term, and 6 months’ basic salary (\$91,207 for the 2020-21 financial year) where they have served for two or more terms.

Further information on the MP superannuation schemes is provided in chapter 3.

## 1.2 Consultation

In May 2020, the Tribunal published an Issues Paper on the Review of Superannuation Arrangements for Victorian Members of Parliament on its website. The Issues Paper:

- set out the Tribunal’s proposed analytical framework for conducting the superannuation review
- provided an overview of the existing superannuation arrangements (including differences between the superannuation schemes)
- provided several questions for feedback.

The Tribunal invited all affected and interested persons or parties to make a submission in relation to the review. The Tribunal received three written submissions which were published on the Tribunal's website. Submissions cited in this report have not been corrected for publication.

The Tribunal also formed an MP consultative committee which was broadly representative of the parties and views across the Parliament.

The Tribunal expresses its appreciation to all those who made submissions and assisted the Tribunal in carrying out the review. This includes the Department of Parliamentary Services and the Department of Treasury and Finance, which provided the Tribunal with de-identified data to assist with its review.

## 1.3 Analytical framework

The Tribunal developed an analytical framework to guide the identification of potential inequalities and irregularities between the superannuation arrangements for MPs.

### Focus of the comparison

In reviewing the superannuation schemes under Parts 3 and 4 of the PSAS Act, the Tribunal focused on comparing the New Benefits Scheme and the accumulation scheme, as:

- all existing MPs are members of either the New Benefits Scheme or the accumulation scheme
- a 2013 review of the salary entitlements, allowances and other arrangements for Victorian MPs identified a need to 'bridge the gap' between the New Benefits Scheme and the accumulation scheme.<sup>2</sup>

### Meaning of inequality and irregularity

Section 39(1) of the VIRTIPS Act requires the Tribunal to review and report on potential inequalities and irregularities between the superannuation arrangements. The Tribunal considered inequalities and irregularities which may exist at the present time, in addition to those that may arise in the future as a result of changes in MP circumstances or economic conditions.

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<sup>2</sup> Malcolm Hazell, *Independent Review of Victorian MPs' Salary Entitlements, Allowances and Other Arrangements*, report prepared for the Department of Premier and Cabinet, Victoria, 2013.

The VIRTIPS Act does not define the terms ‘inequality’ and ‘irregularity’. As such, the Tribunal has used the definitions outlined below to guide its review.

### Inequalities

To assess potential inequalities between the superannuation schemes, the Tribunal considered whether differences between the superannuation schemes are leading to the inequitable treatment of some existing or former MPs. In line with previous Australian superannuation reviews, the Tribunal has been guided by the concept of ‘equity’ in terms of:<sup>3</sup>

- horizontal equity – individuals in similar circumstances should be treated similarly (i.e. receive a similar superannuation benefit)
- vertical equity – difference in the treatment of individuals should reflect, and be proportionate to, relevant difference in their circumstances.

The principle of horizontal equity was found to be more relevant to the review because the superannuation scheme that applies to an MP is determined, in the first instance, by the date they first entered the Parliament.<sup>4</sup> For example, an MP in the accumulation scheme may have the same duties and characteristics (e.g. age, marital status) as another MP in the New Benefits Scheme, yet may receive significantly different superannuation benefits because they entered the Parliament at a later date.

When considering these principles, the Tribunal also took into account that the Parliament retains the power to change laws when appropriate (e.g. to reflect changing community standards and expectations), even if that results in the different treatment of individuals in comparison to their predecessors. The Tribunal also noted that, when MP superannuation arrangements have been changed in a disadvantageous manner in the past, these changes were generally subject to grandfathering provisions so that they did not unfairly impact on individuals who made decisions based on previous arrangements.

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<sup>3</sup> John Harrison, ‘Assessing the Taxation of Superannuation in Terms of Horizontal and Vertical Equity’, *Journal of the Australasian Tax Teachers Association* 13, no. 1 (2018): 114-151; Anthony Asher, ‘Equity in Retirement: Are All Australians Getting a Fair Deal?’, *The Economic and Labour Relations Review* 22, no. 3 (2011): 65-84; Ross Clare, *Equity and Retirement Income Provision in Australia* (Association of Superannuation Funds Australia: Sydney, 2001).

<sup>4</sup> Exceptions are: (a) MPs who were in the Parliament in 1996 and elected to transfer into the New Benefits Scheme, and (b) MPs in defined benefit schemes who leave the Parliament and, upon returning, join the accumulation scheme.



## Irregularities

In assessing irregularities, the Tribunal considered matters such as:

- unforeseen differences in the application of certain Commonwealth tax laws to members of the defined benefit and accumulation schemes and the net benefits of being a member of each scheme
- circumstances where the rules of the schemes are leading to outcomes that are undesirable or unexpected
- inconsistencies or ambiguities in the legislation, such as when the intended meaning of a rule relating to the operation of one of the schemes may be open to multiple interpretations.

## Structure of report

The subsequent chapters of the report set out the Tribunal's analysis of the MP superannuation schemes and options to address potential inequalities and irregularities. Chapter 2 sets out the superannuation arrangements for other Australians, including MPs in other jurisdictions. Chapter 3 details the current superannuation arrangements for MPs, including a brief overview of the rationale for MP superannuation and key historical events in its development. Chapter 4 provides a qualitative comparison of the schemes. Chapter 5 presents the key findings of actuarial modelling comparing the relative financial benefits of the schemes. Chapters 6 and 7 detail the Tribunal's considerations in assessing potential inequalities and irregularities, respectively, and its findings and recommendations.



# 2 Superannuation for other Australians



In reviewing the superannuation arrangements for Victorian MPs, the Tribunal has considered the superannuation provided to other Australians.

This information has helped the Tribunal compare the superannuation schemes under Parts 3 and 4 of the PSAS Act with superannuation arrangements provided in the general labour market in Australia, and establish a community standard by which to assess MP superannuation arrangements. The Tribunal gave particular consideration to the superannuation arrangements for MPs in other jurisdictions and for other Victorian public sector roles where defined benefit schemes have also been phased out and replaced by accumulation schemes.

## 2.1 Context

The majority of Australians have some form of superannuation. According to data published by the Australia Bureau of Statistics (ABS) for the 2017-18 financial year, approximately 72 per cent of Australians aged 15 and over have a superannuation account.<sup>5</sup> As at 30 June 2018, 64 per cent held only one account, while 36 per cent had two accounts or more.<sup>6</sup>

### Entitlement to superannuation

The *Superannuation Guarantee (Administration) Act 1992* (Cth) introduced compulsory superannuation for many Australians. It provides that employers must contribute a minimum amount (expressed as a percentage of ordinary time earnings) on behalf of each eligible employee.<sup>7</sup> For the 2020-21 financial year, this amount – known as the SG percentage – is 9.5 per cent. Employers may be

<sup>5</sup> ABS, *Household Income and Wealth, Australia*, cat. no. 6523.0, 2017-18.

<sup>6</sup> Australian Taxation Office, 'Multiple Super Accounts Data', accessed 3 June 2020, <https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Super-statistics/Super-accounts-data/Multiple-super-accounts-data/>.

<sup>7</sup> Employees generally need to earn \$450 or more in a calendar month to be eligible for superannuation. Individuals under 18 and private and domestic workers must also work for more than 30 hours per week to be eligible. *Superannuation Guarantee (Administration) Act 1992* (Cth), ss11(2), 27(2) and 28.



required to contribute a greater amount where this is specified in an enterprise agreement or in legislation (e.g. PSAS Act).

As at 31 March 2019, approximately 90 per cent of enterprise agreements provided for 9.5 per cent superannuation contributions. Around 7 per cent of enterprise agreements provided for contributions which exceed 9.5 per cent, while only 0.2 per cent specified a percentage of at least 15.5 per cent (the amount provided to Victorian MPs).<sup>8</sup>

## Types of superannuation funds

Most Australians are members of superannuation funds that are regulated by the Australian Prudential Regulation Authority (APRA). Some Australians choose to instead have their superannuation invested through a self-managed superannuation fund (SMSF). As at 30 June 2019, approximately 1.1 million superannuation accounts were held with SMSFs (4 per cent of all accounts).<sup>9</sup> The average balance of accounts held in SMSFs, \$628,000, was significantly higher than the average balance in APRA regulated funds, \$72,000.<sup>10</sup> In addition, approximately 837,000 superannuation accounts (3 per cent of all accounts) were held with exempt public sector superannuation schemes. These are schemes operated by Commonwealth, state or territory governments that are not directly regulated by APRA.<sup>11</sup>

The majority of Australians have an accumulation-type superannuation account, and defined benefit accounts are becoming increasingly rare. As at 30 June 2019, only around 4 per cent of member accounts (excluding SMSFs) were wholly defined benefit in nature or had a defined benefit component. The average balance of defined benefit accounts, \$364,226, was significantly higher than the average balance of accumulation accounts, \$63,404.<sup>12</sup> However, this may in part be due to differences in the average age of individuals holding defined benefit and accumulation accounts.

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<sup>8</sup> Commonwealth Department of Jobs and Small Business, Workplace Agreements Database, 2019. Approximately 73 per cent of enterprise agreements contained a superannuation clause which explicitly specified 9.5 per cent. Approximately 17 per cent did not contain a specific superannuation clause, so it is assumed that workers covered under these enterprise agreements receive 9.5 per cent due to the minimum requirement. Approximately 3 per cent of enterprise agreements contain a superannuation clause which is varied or not consistent.

<sup>9</sup> APRA, *Annual Superannuation Bulletin June 2019* (APRA: Sydney, 2020).

<sup>10</sup> APRA, *Annual Superannuation Bulletin June 2019*.

<sup>11</sup> Exempt public sector superannuation schemes are listed in Schedule 1AA of the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

<sup>12</sup> APRA, *Annual Superannuation Bulletin June 2019*.

## Superannuation and gender

One of the submissions received by the Tribunal noted that women on average accrue less superannuation over their lifetimes than men. In the 2017-18 financial year (the most recent year for which this ABS data is available), the median superannuation balance for individuals at or approaching their preservation age (55-64 years) was \$118,600 for women and \$183,000 for men,<sup>13</sup> a difference of approximately 54 per cent. The difference was less pronounced for those aged 65-74 — the median balance was \$250,000 for men and \$200,000 for women, a difference of 25 per cent.

Women are also less likely than men to have superannuation. In the 2017-18 financial year, the percentage of individuals aged 15-64 years with no superannuation was 23.5 per cent for women and 20.5 per cent for men.<sup>14</sup>

The gender superannuation gap is primarily caused by a range of factors related to differences in workforce participation, as opposed to superannuation scheme rules. These include that women:<sup>15</sup>

- typically spend more hours undertaking caring responsibilities and participating in unpaid work than men<sup>16</sup>
- are more likely to be employed on a part-time basis<sup>17</sup>
- are more likely to work in industries that provide lower average remuneration
- are less likely to work in roles that attract higher remuneration — for example, in 2019, women accounted for around 17 per cent of CEOs and 37 per cent of managers.<sup>18</sup>

These factors all influence the amount of superannuation that an individual will accumulate over their lifetime.

The Tribunal notes that the Victorian Government's submission to the Australian Government's review of retirement income contained several recommendations for addressing the gender superannuation gap.<sup>19</sup>

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<sup>13</sup> ABS, *Household Wealth and Income, Australia*, cat. no. 6523.0, 2017-18.

<sup>14</sup> ABS, *Household Wealth and Income, Australia*, cat. no. 6523.0, 2017-18.

<sup>15</sup> ARC Centre of Excellence in Population Ageing Research, *Retirement income in Australia: Part 3 – Private resources*, (ARC Centre of Excellence in Population Ageing Research: Sydney, 2018), 15.

<sup>16</sup> Deloitte Access Economics, *Modelling the value of unpaid work and care* (Deloitte Access Economics: Canberra, 2018).

<sup>17</sup> As at July 2020, women accounted for approximately 68 per cent of part-time workers. ABS, *Labour Force, Australia*, cat. no. 6202.0, July 2020.

<sup>18</sup> WGEA, *Gender Equity Insights 2020* (WGEA: Sydney, 2020), 14.

<sup>19</sup> Industrial Relations Victoria, *Victorian Government Submission to the Commonwealth Government's Review of the Retirement Income System*, 10 February 2020.

## Superannuation and retirement

More Australians are working later into life and delaying their retirement. The participation rate (percentage of people in employment or looking for employment) for Australians aged 65 years and over was 13.7 per cent in January 2020. Two decades earlier, this rate was less than half: 5.7 per cent in January 2000.

Most Australians do not have enough superannuation to rely solely on those funds in retirement, and the main source of income of retirees is the Age Pension.<sup>20</sup> The Association of Superannuation Funds of Australia in 2018 estimated — based on the assumption that retirees also receive a part Age Pension — that a single person would require \$545,000 in savings at retirement to have a comfortable lifestyle, while a couple would require \$640,000.<sup>21</sup> In contrast, according to the latest available ABS data, the median superannuation account balance of Australians aged 65-74 in 2017-18 was \$225,700.<sup>22</sup>

## 2.2 Superannuation arrangements for other Australian MPs

All Australian jurisdictions, including the Commonwealth, provide superannuation for their MPs. While the specifics of the arrangements vary, the Tribunal notes the following similarities:

- MPs elected prior to a particular date (typically in the early-to-mid 2000s) are members of a defined benefit scheme, and may be eligible for a pension upon leaving the Parliament
- all new MPs automatically join an accumulation scheme
- most jurisdictions provide MPs in the accumulation scheme with contributions greater than the minimum amount required under the *Superannuation Guarantee (Administration) Act 1992* (Cth).

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<sup>20</sup> ABS, *Retirement and Retirement Intentions*, cat. no. 6238, 2018-19.

<sup>21</sup> Association of Superannuation Funds of Australia (ASFA), *ASFA Retirement Standard* (ASFA: Sydney, 2018).

<sup>22</sup> ABS, *Household Income and Wealth, Australia*, cat. no. 6523.0, 2017-18.

## Defined benefit schemes

Like Victoria, all other states and territories previously provided defined benefit schemes for their MPs, which have since been closed to new entrants.

Victoria's New Benefits Scheme was modelled on the Commonwealth's Parliamentary Contributory Superannuation Scheme. Both schemes were closed to new entrants in 2004.

The superannuation entitlements of former federal MPs in the Parliamentary Contributory Superannuation Scheme are based on a portion of MP base salary, which is set by the Commonwealth Remuneration Tribunal.<sup>23</sup> These arrangements operate in a similar fashion to those now in place for existing and former Victorian MPs in the defined benefit schemes, following the introduction of the BSP in 2019. However, the Commonwealth Remuneration Tribunal is responsible for adjusting the portion of MP base salary that applies for the purposes of the Parliamentary Contributory Superannuation Scheme. In contrast, the Victorian Tribunal was only able to set the initial value of the BSP. In the future, the value of the BSP will be determined by the application of a fixed indexation provision under the PSAS Act.

## Accumulation schemes

Accumulation schemes currently operate in the Commonwealth and in every Australian state and territory. They are mandatory for all new MPs.

Of all Australian jurisdictions, Victoria's accumulation scheme provides MPs with the highest contribution in percentage terms (currently 15.5 per cent of salary). As a result of the way in which contributions for Victorian MPs are structured (SG percentage plus 6 per cent), the rate of contribution will increase in line with increases to the SG percentage.

Leaving aside contributions based on additional salary, Victorian MPs in the accumulation scheme also currently receive the third highest contributions of any state or territory in dollar terms (\$28,274 p.a. before-tax),<sup>24</sup> behind the Commonwealth (\$32,533 p.a. before-tax) and South Australia (\$30,896 before-tax).

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<sup>23</sup> The Commonwealth Remuneration Tribunal may determine that a portion of the base salary is not 'parliamentary allowance' for the purposes of the Parliamentary Contributory Superannuation Scheme. This means that contributions and benefits for members of this defined benefit scheme are based on an amount that may be smaller than the base salary.

<sup>24</sup> This is the amount received by MPs who have not elected to limit their contributions to avoid exceeding the concessional contributions cap.

The superannuation arrangements for new MPs in all Australian jurisdictions are summarised in table 2.1.

**Table 2.1: summary of accumulation fund superannuation arrangements for MPs in Australian jurisdictions**

Jurisdiction	Contributions	
	Annual amount for an MP not holding an additional office (\$) <sup>(a)</sup>	% of salary (or equivalent)
Commonwealth	32,533	15.4
South Australia	30,896	15.4 <sup>(b)</sup>
Victoria	28,274	15.5 <sup>(c)</sup>
Western Australia	24,107	15.4
Australian Capital Territory	23,589	14 <sup>(d)</sup>
New South Wales	21,694	9.5 <sup>(e)</sup>
Queensland	20,288	12.75 <sup>(f)</sup>
Northern Territory	15,456	9.5 <sup>(g)</sup>
Tasmania	13,318	9.5

Notes: (a) Amounts have been calculated based on the published basic salary for an MP in each jurisdiction, as at September 2020. (b) South Australian MPs only receive 15.4% if they remain in the default fund – MPs who transfer to a different fund receive contributions according to the SG percentage. (c) Equal to the SG percentage plus 6%. (d) If an MP chooses to contribute 3% or more of their salary, the Australian Capital Territory will contribute an additional 1%. (e) The salary used to calculate superannuation contributions for New South Wales MPs is taken to be the greater of:

- the ‘maximum contribution base’ under Commonwealth law; or
- the total of the following amounts:
  - the remuneration payable to the MP by way of basic and additional salary
  - the cost of any employment benefits provided
  - the amount of any additional superannuation contributions made by way of salary sacrifice.

(f) Queensland MPs are also required to contribute 5% of their salary. (g) 9% or the minimum required under Commonwealth law, whichever is greater.

Sources: *Parliamentary Salaries, Allowances and Superannuation Act 1968* (Vic); *Parliamentary Superannuation Act 2004* (Cth); *Parliamentary Remuneration Act 1989* (NSW); Department of Parliamentary Services (NSW); *Members’ Remuneration Handbook* (Qld); *Parliamentary Superannuation Act 1974* (SA); *Parliamentary Superannuation Act 1970* (WA); *Parliamentary Salaries, Allowances and Superannuation Act 2012* (Tas); *Legislative Assembly Members’ Superannuation Contributions Act 2004* (NT); *Legislative Assembly (Members’ Superannuation) Act 1991* (ACT).



## Payments for MPs leaving the Parliament

The Commonwealth and each of the states and territories (except for New South Wales and Tasmania) provide a one-off payment to MPs who leave parliament in particular circumstances, often referred to as a resettlement allowance. In Victoria, this payment is called the separation payment. It is akin to the redundancy payments to which many workers are entitled on termination of their employment.

Each jurisdiction sets the size of the payment with reference to the basic salary provided to its MPs. Some jurisdictions (Victoria, the Commonwealth, Western Australia, the Northern Territory and the Australian Capital Territory) also vary the size of the payment based on the former MP's length of service.

While the size of the payment in Victoria falls in the middle of the range provided by Australian jurisdictions, Victoria has fewer eligibility requirements than most jurisdictions.

Victorian MPs in the defined benefit schemes are precluded from receiving the payment, while several other jurisdictions (the Commonwealth, Queensland, Western Australia and the Australian Capital Territory) allow MPs in the defined benefit schemes to receive the payment in at least some circumstances (e.g. if they are unable to access superannuation benefits when leaving parliament).

The arrangements for MPs leaving parliament in all Australian jurisdictions are summarised in table 2.2 (overleaf).

Table 2.2: summary of resettlement allowance (or equivalent) provided when MPs leave parliament and associated eligibility criteria, Australian jurisdictions

Jurisdiction	Eligibility criteria	Amount provided	Maximum amount (\$)
Northern Territory	MP was elected at or after the 2005 general election, and is not entitled to receive a pension or superannuation benefit related to their parliamentary service immediately upon leaving. MPs are not eligible if they leave parliament in order to be a candidate for another seat in an Australian parliament and are successful.	Between 4 and 12 months of MP basic salary <sup>(a)</sup>	162,696
Western Australia	MP leaves parliament and is not entitled to superannuation benefits through the Parliamentary Pension Scheme. May only be received once.	Between 3 and 9 months of MP basic salary <sup>(a)</sup>	117,402
Commonwealth	MP leaves parliament as a result of failing to be pre-selected (for reasons other than misconduct) or re-elected and: <ul style="list-style-type: none"> <li>• if a member of the parliamentary defined benefit scheme, they are not old enough to be eligible to start receiving a pension under the scheme<sup>(b)</sup></li> <li>• if a member of the accumulation scheme, they declare to the Clerk that they intend to seek employment.</li> </ul>	Between 3 and 6 months of MP basic salary <sup>(a)</sup>	105,625
Victoria	Provided to MPs who are not members of the parliamentary defined benefit schemes and who leave the Parliament for reasons other than corrupt conduct or wilful breach of duties, or who die in office. Former MPs are required to repay the money if they return to the Parliament in the same term of the Parliament or in the term after the general election at which they ceased to be an MP.	Between 3 and 6 months of the MP basic salary <sup>(a)</sup>	91,207

Jurisdiction	Eligibility criteria	Amount provided	Maximum amount (\$)
South Australia	MP retires involuntarily (excluding those who were subsequently elected to a parliament in another jurisdiction).	12 weeks of MP basic salary	46,298
Australian Capital Territory	Available to all MPs who lose office, retire or resign.	Up to 12 weeks MP basic salary <sup>(a)</sup>	38,883
Queensland	MP leaves parliament as a result of failing to be pre-selected (for reasons other than misconduct) or re-elected, and is not able to access a pension or superannuation benefit related to their parliamentary services immediately upon leaving.	12 weeks of MP basic salary <sup>(c)</sup>	36,720

Notes: (a) Amount varies depending on the MP's length of service. (b) Existing and former Commonwealth MPs in the Parliamentary Contributory Superannuation Scheme who were elected at or after the 2001 Federal election generally cannot begin receiving a pension until they turn 55 years old. (c) If the former MP was elected before 1 October 2014, the amount is instead equivalent to the Commonwealth resettlement allowance.

Sources: *Parliamentary Salaries, Allowances and Superannuation Act 1968* (Vic); *Remuneration Tribunal (Members of Parliament) Determination No. 2 2019* (Cth); *Members' Remuneration Handbook* (Qld); *Parliamentary Remuneration Act 1990* (SA); *Determination (Members of Parliament) 2017* (WA); *Remuneration Tribunal Report and Determination No. 1 of 2020* (NT); *Determination 1 of 2016 – Members of the ACT Legislative Assembly* (ACT).

## 2.3 Superannuation arrangements for other Victorian Government roles

Most Victorian public sector employees employed from 1994 are members of accumulation superannuation schemes. Defined benefit schemes and pensions remain open to a limited number of public sector roles including operational employees of emergency service entities and certain judicial roles.

### Accumulation schemes

If a public sector employee is in an accumulation scheme, their employer will, by default, make the minimum contribution required under Commonwealth law (i.e. 9.5 per cent of ordinary time earnings) to the employee's nominated fund. Employers may also make additional contributions on behalf of the employee under salary sacrifice or salary packaging arrangements.

### Defined benefit schemes for operational employees in emergency services

Prior to the 1990s, almost all employees in the Victorian public sector (including the Victorian Public Service) were members of a defined benefit scheme.<sup>25</sup> Due to challenges with funding those schemes, most of them were closed to new members on 1 January 1994 (appendix A). An exception is the ESSS.<sup>26</sup> Members of the ESSS defined benefit fund are not required to contribute to the fund, although if they choose to do so they are eligible for a greater superannuation benefit. The superannuation benefit is ordinarily provided as a lump sum. Generally speaking, the maximum benefit is equal to 7.5 times the member's average salary over the last 2 years of employment (or 8.4 times in circumstances where an untaxed benefit is payable).

### Judicial pensions

Judges of the Supreme Court and County Court of Victoria may be eligible for a judicial pension when they retire.<sup>27</sup> Similar arrangements are also provided for the Chief Magistrate of the Magistrates' Court of Victoria.<sup>28</sup> Judges are not required to make contributions from their salary to be eligible for the pension.

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<sup>25</sup> VPSC, *The State of the Public Sector in Victoria 2015-2016* (State Government of Victoria: Melbourne, 2016).

<sup>26</sup> Which remains open to operational employees in Victoria Police, Metropolitan Fire and Emergency Services, Ambulance Victoria, Country Fire Authority, Department of Environment, Land, Water and Planning (certain positions).

<sup>27</sup> *Constitution Act 1975* (Vic), s83; *County Court Act 1958* (Vic), s14.

<sup>28</sup> *Magistrates' Court Act 1989* (Vic), s10A.

Generally speaking, judges appointed on or after 18 May 1995<sup>29</sup> are eligible for a judicial pension if one of the following applies:

- they are at least 65 years when they resign or retire and have served at least 10 years
- they served at least 20 years
- they become afflicted with a permanent incapacity preventing them from carrying out their duties and were appointed before the age of 60.

The maximum pension paid to eligible former judges is equal to 60 per cent of the current salary paid to holders of that office. Upon the judge's death, a reduced pension reverts to their partner or eligible children.

## 2.4 Summary

Compulsory superannuation is one pillar of the Australian Government's retirement income policy. Since the introduction of the SG percentage, employers are required to make a minimum rate of superannuation contributions on behalf of most employees. Currently this rate is 9.5 per cent of their ordinary time earnings. Nonetheless, most Australians do not have enough superannuation to rely solely on those funds in retirement, and the main source of income of retirees is the Age Pension.

While Victorian public servants and MPs were covered by defined benefit schemes until the 1990s and early 2000s respectively, most of these schemes were closed to new members. They were replaced by accumulation schemes, which are mandatory for all new MPs.

Of all Australian jurisdictions, Victoria's accumulation scheme provides MPs with the highest contributions in percentage terms and the third highest contributions of any jurisdiction in dollar terms, behind the Commonwealth and South Australia. Most Australian jurisdictions also provide a one-off payment to MPs who leave parliament in particular circumstances, and while the size of the payment in Victoria falls in the middle of the range, Victoria has fewer eligibility requirements than most jurisdictions.

Chapter 3 provides an historical overview of superannuation for Victorian MPs and summarises the key features and rules of the superannuation schemes.

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<sup>29</sup> Pension eligibility rules for judges were changed on that date by the *Judicial Remuneration Tribunal Act 1995* (Vic), and different rules apply for judges appointed before that date.



# 3 Overview of Victorian MP superannuation arrangements



This chapter provides a brief overview of key events in the history of superannuation for MPs in the Parliament of Victoria — including the rationale for MP superannuation arrangements — and summarises the key features and rules of the superannuation schemes under review.

Further information about how MP superannuation arrangements have been influenced by the unique roles, responsibilities and employment arrangements of MPs and superannuation for other occupations is provided in appendix A.

## 3.1 Key historical events

The State of Victoria first introduced superannuation coverage for its MPs in 1946,<sup>30</sup> to provide support for MPs who lost their seats and did not have the financial means to support themselves. At the time, this was considered necessary as the annual parliamentary allowance was not deemed sufficient to provide for a self-funded retirement.<sup>31</sup> Eligible MPs would receive a pension equal to the ‘basic wage’ for Melburnians after leaving the Parliament.<sup>32</sup>

Significant changes were made to MP superannuation arrangements in 1968. The *Parliamentary Salaries and Superannuation Act 1968* (Vic) sought to provide “adequate remuneration” for MPs by increasing salaries, and introduced a new defined benefit scheme (now known as the Existing Benefits Scheme) which tied pensions to MPs’ salaries, and was modelled on arrangements for Victorian public service employees.<sup>33</sup>

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<sup>30</sup> *Parliamentary Contributory Retirement Fund Act 1946* (Vic).

<sup>31</sup> Victoria, *Parliamentary Debates*, ‘Legislative Assembly’, 11 December 1946, 4054 (John Cain, Premier and Treasurer).

<sup>32</sup> *Parliamentary Contributory Retirement Fund Act 1946* (Vic), s7.

<sup>33</sup> Victoria, *Parliamentary Debates*, ‘Legislative Assembly’, 19 November 1968, 1815 (Henry Bolte, Premier and Treasurer).

In 1996, the Victorian Government introduced a new defined benefit scheme for MPs (known as the New Benefits Scheme) largely based on the MP superannuation scheme used at the time by the Commonwealth Government. The Existing Benefits Scheme was closed to new members.

The New Benefits Scheme was in turn closed to new members who were elected as an MP from 10 November 2004, following a similar move by the Commonwealth Government. MPs first elected after this time became members of an accumulation scheme. The then Minister for Finance stated that the intention of the reforms was to bring Victorian MP superannuation arrangements “into line with those available to the broader community”. He continued:<sup>34</sup>

*all new members of Parliament will receive employer contributions at a rate of 9 per cent as required by the Superannuation Guarantee ... consistent with the superannuation arrangements that apply to the vast majority of the Victorian workforce.*

## Reforms following Hazell Review

In 2012, the Victorian Government commissioned Malcolm Hazell CVO AM to conduct a review into the salary entitlements, allowances and other arrangements for Victorian MPs (Hazell Review). The Hazell Review identified a need to ‘bridge the gap’ between the superannuation arrangements of MPs in the pre-2004 defined benefit schemes and those in the post-2004 accumulation scheme. However, it concluded that a return for all MPs to the pre-2004 scheme would be unjustifiable given prevailing community values and expectations and the likely cost (estimated at that time to be \$6-7 million p.a.).<sup>35</sup>

The Hazell Review made three recommendations to the Government to address the discrepancy between the superannuation schemes, each of which has been implemented:

- Increasing the employer superannuation contributions for MPs in the accumulation scheme from 9 per cent to 15 per cent<sup>36</sup> (implemented in 2013,

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<sup>34</sup> Victoria, Parliamentary Debates, ‘Legislative Council’, 3 November 2004, 1007 (John Lenders, Minister for Finance).

<sup>35</sup> Malcolm Hazell, *Independent Review of Victorian MPs’ Salary Entitlements, Allowances and Other Arrangements*, 31.

<sup>36</sup> The proposed increase was justified on the basis that MPs do not accrue recreation or long-service leave. Malcolm Hazell noted that, for an MP in the accumulation scheme who has served for two terms, the increase in contributions would “provide a benefit roughly equivalent to the long-service and annual leave entitlements that other public officials may expect to accrue over the same period”. Malcolm Hazell, *Independent Review of Victorian MPs’ Salary Entitlements, Allowances and Other Arrangements*, 32.



when the superannuation contribution rate for MPs was increased to the SG percentage plus 6 per cent).

- Introducing a resettlement allowance for former MPs who are not members of the defined benefit schemes and who lose their seat in the Parliament (introduced in 2013, and replaced by the separation payment in 2019).
- Revising the MP basic salary based on an objective and comprehensive work-value assessment (completed by the Tribunal in 2019).

Table 3.1 summarises the key events in the history of MP superannuation and appendix A provides a detailed history of MP superannuation in Victoria.

**Table 3.1: key events in the history of Victorian MP superannuation**

Year	Description
1946	Superannuation for Victorian MPs introduced: <ul style="list-style-type: none"> <li>• £1 compulsorily deducted from the fortnightly pay of each MP</li> <li>• eligible MPs (or in some cases, their spouses) provided with a pension equal to the 'basic wage' for Melbourne</li> <li>• MPs not eligible for a pension provided with a one-off retirement allowance.</li> </ul>
1948-1962	Several minor changes made to the MP superannuation scheme (e.g. increases to MP contributions and rate of pension). Short-lived successor scheme introduced in 1962.
1968	The PCSF is established, and a new superannuation scheme (now known as the Existing Benefits Scheme) is introduced for MPs modelled on arrangements for Victorian public service employees. Under the Existing Benefits Scheme, contributions and pension entitlements are tied to current MP salaries.
1993	Victoria's public sector defined benefit schemes are closed to most new employees. Changes are made to how MP pension entitlements are accrued going forward, to achieve cost savings for the State.
1996	New Benefits Scheme is introduced for Victorian MPs, based on the scheme for Commonwealth MPs. The Existing Benefits Scheme is closed to new members.
2004	New Benefits Scheme is closed to new members, following the Commonwealth's decision to close its MP defined benefit scheme. New MPs are members of an accumulation scheme.
2012-2013	Changes made to MP superannuation and allowances following the Hazell Review: <ul style="list-style-type: none"> <li>• resettlement allowance is introduced for MPs who are not in the defined benefit scheme</li> <li>• employer superannuation contributions for MPs in the accumulation scheme are increased from 9 per cent to (SG percentage + 6%).</li> </ul>
2019	The Tribunal is established. The resettlement allowance is replaced by the separation payment (this change is backdated to before the start of the caretaker period for the 2018 state election). The Tribunal sets the BSP in the <i>Members of Parliament (Victoria) Determination 01/2019</i> , which is used to calculate contributions and pension entitlements for members of the defined benefit schemes going forward.

In addition to historically reflecting arrangements for public service employees, MP superannuation arrangements have been designed to reflect the “peculiarities and special features of parliamentary service”,<sup>37</sup> including the fact that MPs do not enjoy the same employment standards and protections as employees in most other occupations. For example, MPs do not:<sup>38</sup>

- accrue annual leave
- accrue sick or personal leave
- have employment protection rights.

A particular feature of the MP defined benefit schemes (and of similar schemes provided to MPs in other Australian jurisdictions), which reflected the unique nature of parliamentary service, was that former MPs could be eligible to receive a pension as soon as they left the Parliament even if they had not reached retirement age. This provided those former MPs with a measure of security from the time they left the Parliament, given the difficulties some former MPs experienced when trying to find subsequent employment.

When the parliamentary pension scheme was first introduced in 1946, the then Premier John Cain Senior remarked that:<sup>39</sup>

*There is probably nothing more difficult for a man who has been associated with [the Parliament] for the best years of his life than to have to go out and earn his living elsewhere.*

The Tribunal’s *Members of Parliament (Victoria) Determination 01/2019*<sup>40</sup> noted that becoming an MP comes with significant risk, uncertainty and personal sacrifice. The Tribunal noted that MPs are effectively engaged on a ‘fixed term contract’ for a 4-year period. Every 4 years, MPs face the risk of losing their job through both the preselection process and the election.

Two of the submissions received by the Tribunal discussed the challenges faced by former MPs when trying to find alternative employment, and why MPs may require bespoke superannuation arrangements to address these issues.

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<sup>37</sup> Malcolm Hazell, *Independent Review of Victorian MPs’ Salary Entitlements, Allowances and Other Arrangements*, 32.

<sup>38</sup> Victorian Independent Remuneration Tribunal, *Members of Parliament (Victoria) Determination 01/2019* (Victorian Independent Remuneration Tribunal: Melbourne, 2019), 39.

<sup>39</sup> Victoria, *Parliamentary Debates*, ‘Legislative Assembly’, 11 December 1946, 4056 (John Cain, Premier and Treasurer).

<sup>40</sup> Victorian Independent Remuneration Tribunal, *Members of Parliament (Victoria) Determination 01/2019*, 39.

One submission informed the Tribunal that:

*[It] is the experience of many, perhaps most MPs, that post Parliamentary employment is difficult to obtain and, if found, generally not at a salary level close to a backbench salary.*

Another submission noted that an MP's "political career can be a factor against them" and raised the lack of employment opportunities that may arise after leaving the Parliament:

*Anecdotally, there are suggestions that the higher an MP has been able to rise through the ranks to senior positions such as say a ministerial role, the more likely opportunities in the private or even public sector may avail themselves. But as the tribunal would know, such positions are the few rather than the many and so for other MPs who have served their constituency, the road back to a normal life may be more challenging, potentially through no fault of their own.*

## **3.2 Superannuation schemes for existing and former Victorian MPs**

The current superannuation arrangements for existing and former Victorian MPs are outlined in Parts 3 and 4 of the PSAS Act. Part 3 of the Act provides the rules for the Existing Benefits Scheme and the New Benefits Scheme, and Part 4 provides the rules for the accumulation scheme.

In general, MPs who were first elected on or after 10 November 2004 are in the accumulation scheme, while those who entered the Parliament before that date are in a defined benefit scheme:

- MPs who entered the Parliament before 2 July 1996 are members of the Existing Benefits Scheme.
- MPs who were first elected after 2 July 1996, but before 10 November 2004, are in the New Benefits Scheme.

Both defined benefit schemes are now closed to new members.

There are some exceptions to these general rules, explained in box 3.1.

**Box 3.1: additional rules used to determine an MP's superannuation scheme**

The following special rules apply to MPs eligible for the defined benefit schemes:

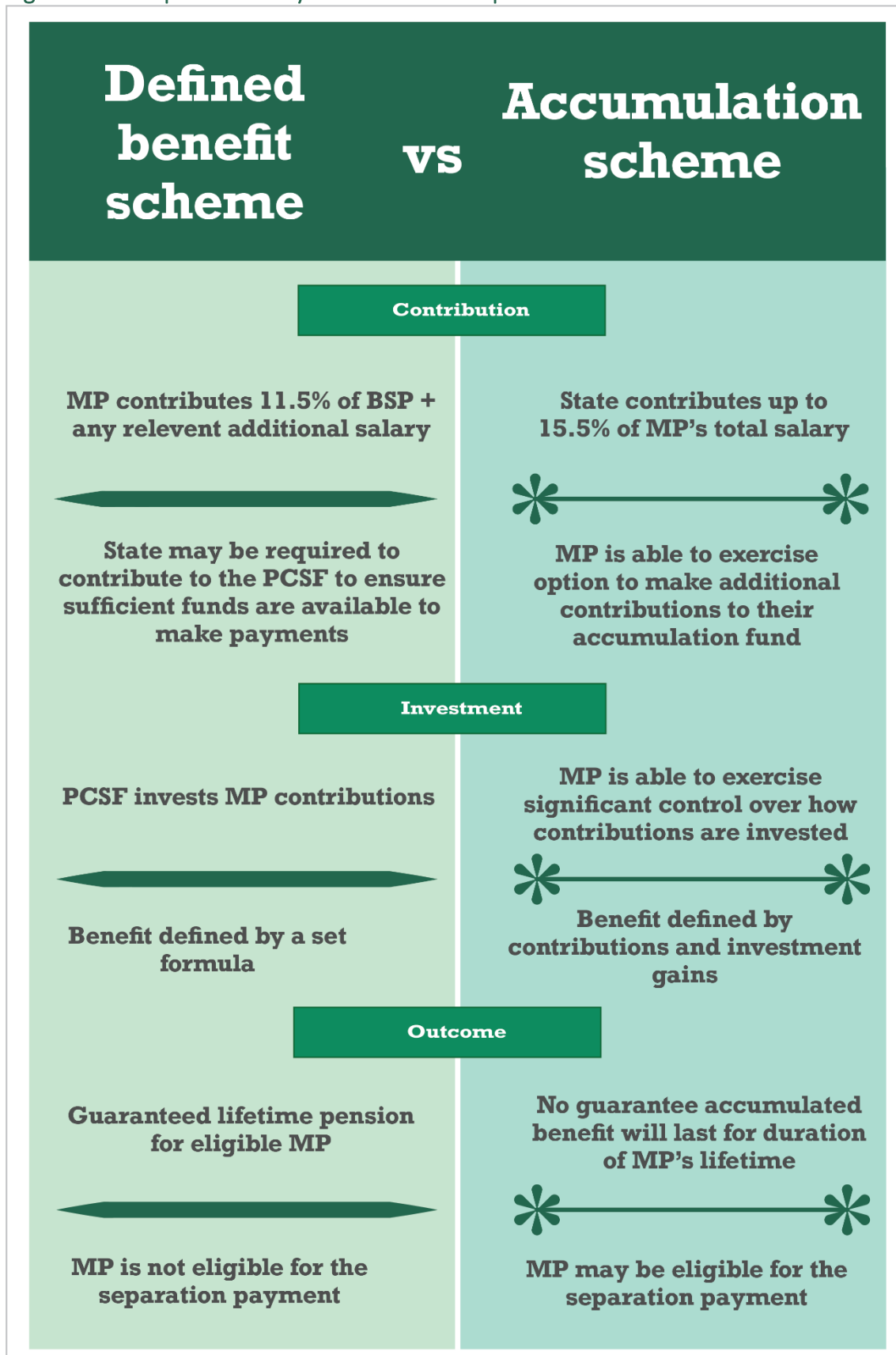
- Serving MPs in the Existing Benefits Scheme could elect to be subject to the provisions of the New Benefits Scheme (i.e. transfer into that scheme) at any time.
- An MP in the New Benefits Scheme who leaves the Parliament and is subsequently re-elected on or after 10 November 2004 becomes a member of the accumulation scheme. They resume receiving a pension (if eligible) upon leaving the Parliament, and also receive their superannuation entitlements from the accumulation scheme upon it vesting (subject to Commonwealth rules on when those benefits can be accessed).
- If an MP ceases to be an MP as a result of resigning from one House of the Parliament and is elected to the other House within 3 months, their period of service is regarded as being uninterrupted (i.e. their scheme membership remains unchanged).

Source: PSAS Act.

As at September 2020, there were no existing MPs in the Existing Benefits Scheme and 17 existing MPs in the New Benefits Scheme. In addition, approximately 200 individuals (former MPs or their partners) are receiving a pension under these schemes. The other 111 existing MPs are members of the accumulation scheme.

Figure 3.1 (overleaf) compares the key features of the MP defined benefit schemes and accumulation scheme.

Figure 3.1: comparison of key features of MP superannuation schemes

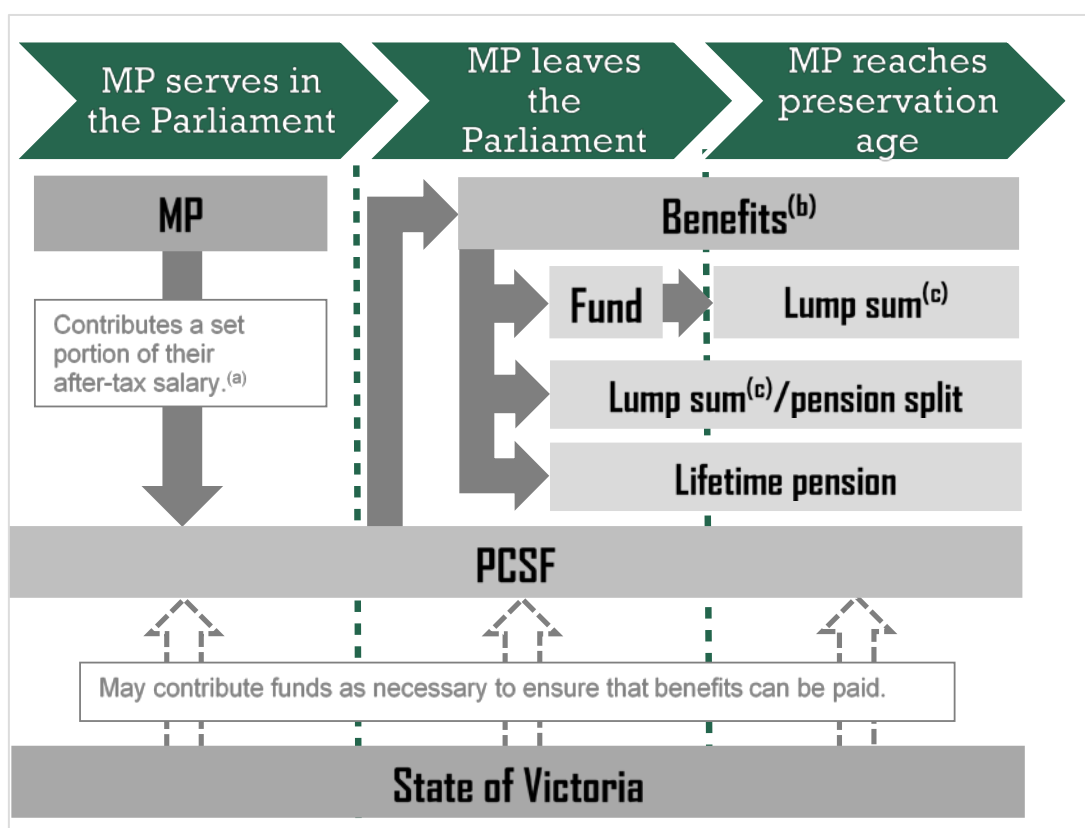


Source: Tribunal analysis.

## Overview of the defined benefit schemes

In exchange for contributions made from their salary during their time as an MP, members of the defined benefit schemes are eligible for a fixed benefit upon leaving the Parliament (figure 3.2).

Figure 3.2: how the MP defined benefit schemes operate



Notes: (a) MPs are required to contribute from their basic salary for the first 20.5 years of service, and from their additional salary (if any) during all years of service. For an explanation of how contributions are calculated, see appendix B. (b) Eligible MPs can begin receiving a pension after they leave the Parliament, regardless of their age. They may also elect to commute all or part of their pension into a lump sum. MPs who are not eligible for a pension receive a lump sum. (c) Lump sums are transferred into an accumulation fund when the MP leaves the Parliament, and can be accessed when the MP reaches their preservation age (ranges from 55 to 60 years depending on their date of birth) and retires. Once in the accumulation fund, the MP may choose to access the lump sum as an income stream or use it to purchase an annuity (subject to Commonwealth preservation rules).

Participating former and existing MPs in the defined benefit schemes are members of the PCSF. The PCSF provides benefits to a member when they leave the Parliament, and in some cases to their partner or eligible children, based on the rules of the applicable scheme.

Existing MPs in both defined benefit schemes are required to contribute 11.5 per cent of the BSP for the first 20.5 years of service. MPs who receive an additional salary because they are specified parliamentary office holders are also

required to contribute 11.5 per cent of additional salary (if any) during all years of such service.

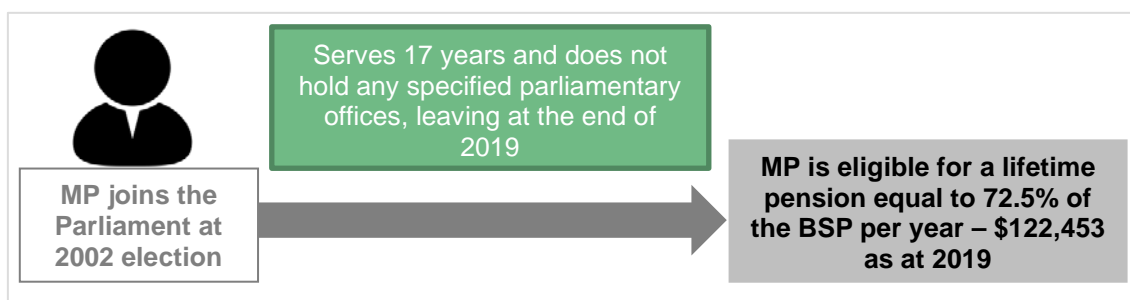
Member contributions are pooled and invested by ESSSuper, which is responsible for administering the PCSF,<sup>41</sup> and used to pay the superannuation benefits of members. The State of Victoria has been required, from time to time, to contribute additional funds to the PCSF to ensure that sufficient funds are provided for benefits to be paid.<sup>42</sup>

Both schemes provide participating MPs with a fixed benefit upon leaving the Parliament. Eligible former MPs receive a pension upon leaving the Parliament, which they may elect to convert into a lump sum<sup>43</sup> (subject to restrictions under Commonwealth law on when superannuation entitlements can be accessed).<sup>44</sup>

Typically, an MP needs to serve at least 8 years to be eligible for the pension, although a longer eligibility period may apply depending on the circumstances in which they leave the Parliament (e.g. if they choose to resign mid-term). Pensions are calculated as a percentage of the BSP.

For example, under the New Benefits Scheme, the minimum pension is equal to 50 per cent of the BSP. An additional 2.5 per cent is paid for every year of service over 8 years, up to a maximum of 75 per cent. Cameo 3.1 provides an example of the pension entitlements of an MP who serves 17 years in the Parliament.

### Cameo 3.1: hypothetical former MP taking a pension under the New Benefits Scheme



Note: Pension is indexed based on changes in the Consumer Price Index and Average Weekly Ordinary Time Earnings in future years.

Source: Tribunal analysis.

<sup>41</sup> In 2014, the assets and liabilities of the PCSF were transferred to the Emergency Services and State Superannuation Board (trading as ESSSuper).

<sup>42</sup> Information provided by the Department of Treasury and Finance.

<sup>43</sup> According to data provided to the Tribunal by the Department of Treasury and Finance, since 2002, approximately 20 per cent of eligible MPs have elected to commute some or all of their pension entitlement into a lump sum. The average percentage commuted is 16 per cent.

<sup>44</sup> *Superannuation Industry (Supervision) Regulations 1994* (Cth), reg 6.01(7), Division 6.3 and Schedule 1.

The minimum value of the pension for an MP who does not hold any specified parliamentary offices is 50 per cent of the BSP (as at 30 June 2020, \$84,450.50 p.a.), and the maximum is 75 per cent of the BSP (as at 30 June 2020, \$126,676 p.a.).

MPs who held a specified parliamentary office also receive an additional pension based on the years they held office and a percentage of their additional salary received.

In contrast, former MPs who are ineligible for the pension instead receive a lump sum payment of up to 3½ times their contributions.

Upon the death of an MP, a reduced pension is payable to their partner or eligible children.

Appendix B provides further detail on the operation of the defined benefit schemes.

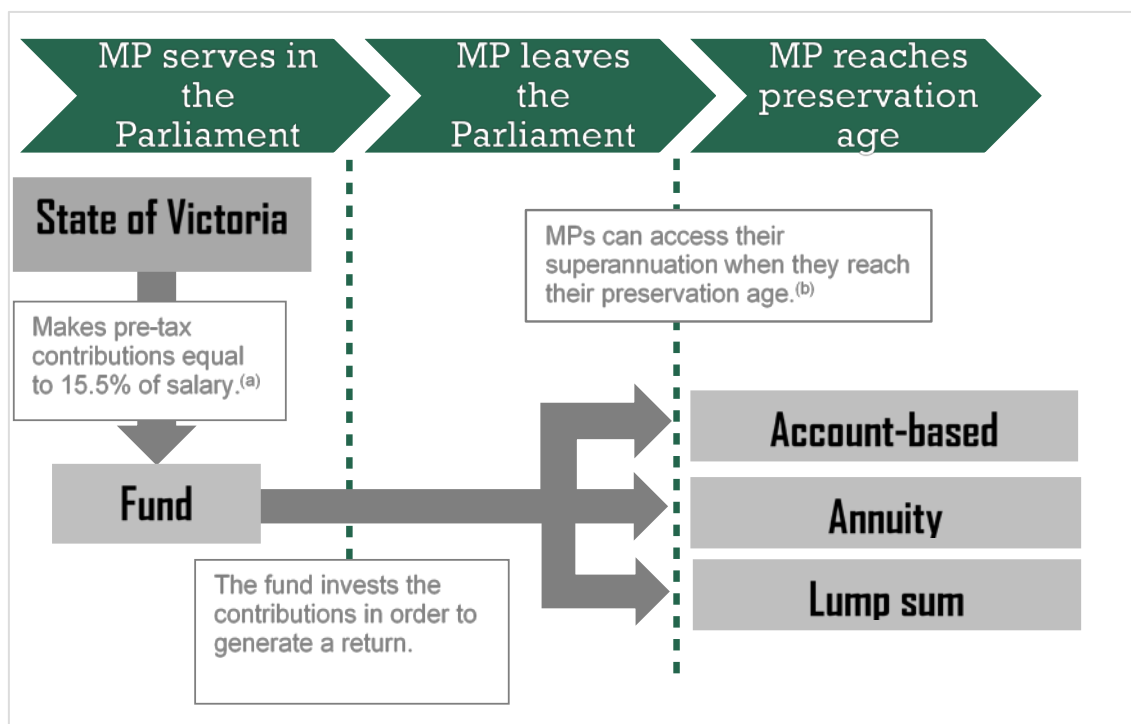
## **Overview of the accumulation scheme**

MPs elected from 10 November 2004 are members of the accumulation scheme.

Under an accumulation scheme, MPs are paid contributions by the State into an accumulation fund of their choice, with contributions invested by the fund and superannuation balances generally first accessible when the MP reaches their preservation age (figure 3.3 overleaf).



Figure 3.3: how the accumulation scheme operates



Notes: (a) Under s31 of the PSAS Act, MPs can elect to limit the amount of contributions they receive to prevent them exceeding the concessional contributions cap. (b) In some circumstances, an MP may be able to access their superannuation prior to reaching their preservation age (e.g. due to severe financial hardship or ill-health).

Part 4 of the PSAS Act requires the State to make superannuation contributions that are equal to the greater of:

- the 'prescribed percentage' (currently 15.5 per cent) of the basic salary and additional salary (if any) (the prescribed percentage contribution amount)
- the minimum amount necessary to avoid a Superannuation Guarantee (SG) shortfall under Commonwealth law (the shortfall contribution amount).

The prescribed percentage contribution amount typically exceeds the shortfall contribution amount.

The prescribed percentage is equal to the minimum percentage required under Commonwealth law (the SG percentage, currently 9.5 per cent) plus 6 per cent. The SG percentage is currently set to progressively increase to 12 per cent by 1 July 2025,<sup>45</sup> which would result in Victorian MPs receiving incremental increases to their contributions up to 18 per cent of their basic and any additional salaries.

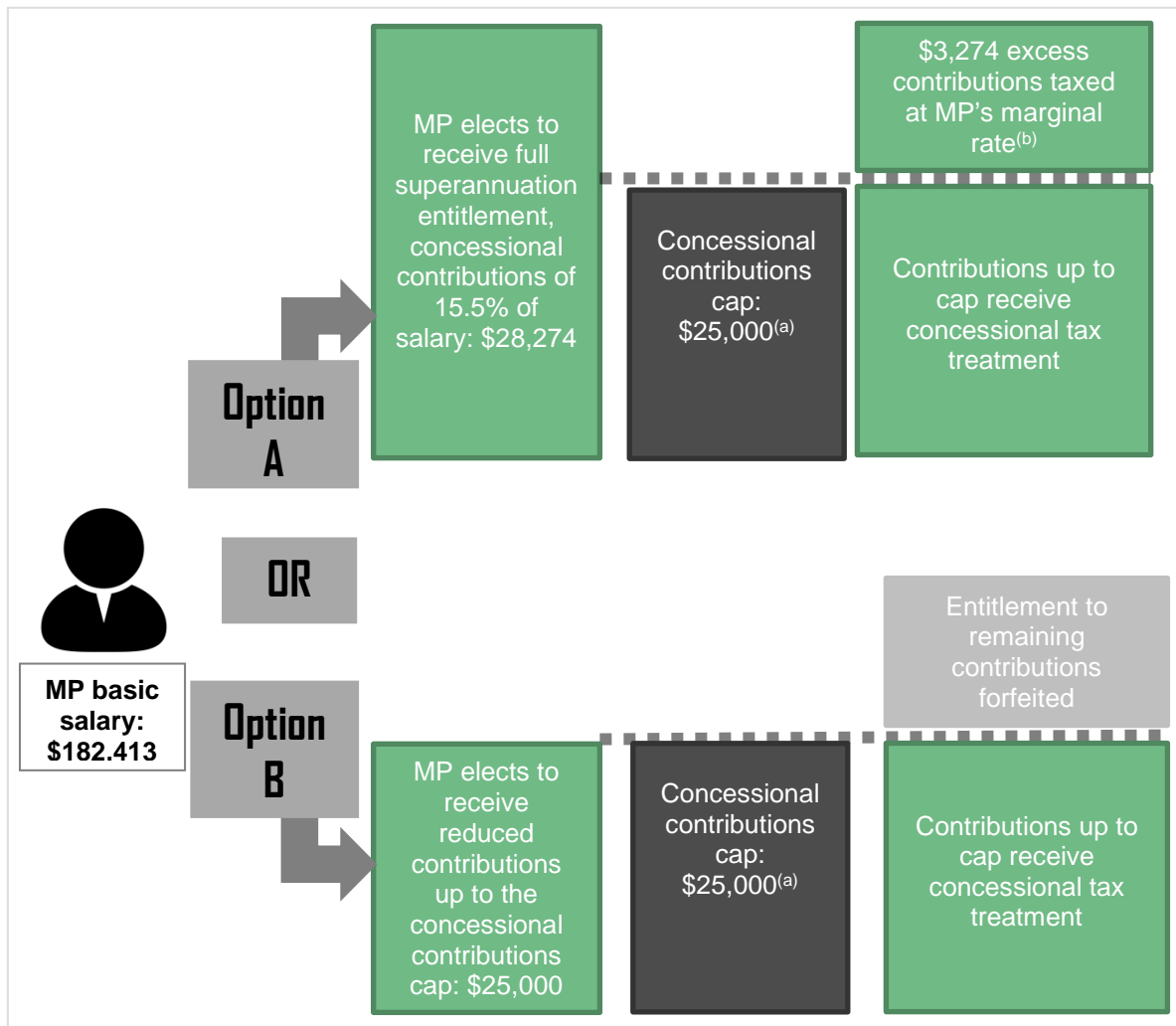
From 16 September 2019, the contributions received by MPs in the accumulation scheme will ordinarily exceed the Commonwealth concessional contributions cap (currently \$25,000), thereby resulting in an additional tax liability (appendix C).

<sup>45</sup> *Superannuation Guarantee (Administration) Act 1992* (Cth).

MPs who receive excess concessional contributions will receive a determination from the Australian Taxation Office (ATO) after the financial year has concluded and have the option of withdrawing up to 85 per cent of excess contributions from their superannuation fund.<sup>46</sup>

Under the PSAS Act, MPs can request in writing that the State limit their contributions to avoid exceeding the cap.<sup>47</sup> If an MP chooses to do so, they forfeit their entitlement to the contributions that would exceed the cap (cameo 3.2).

**Cameo 3.2: superannuation contributions for an MP in the accumulation scheme who does not receive an additional salary**



Notes: (a) From 1 July 2018, MPs with a total superannuation balance less than \$500,000 on 30 June of the previous financial year are able to 'carry forward' unused portions of the cap for up to 5 years. As a result, these individuals may have an increased cap for some financial years. (b) MP also incurs an excess concessional contributions charge.

<sup>46</sup> *Taxation Administration Act 1953* (Cth), Schedule 1 Division 131.

<sup>47</sup> PSAS Act, s31(4).

MPs are required to nominate a complying fund for their contributions to be paid into, otherwise contributions are paid into the default fund. The default fund is VicSuper, which is currently used by around 50 per cent of existing MPs in the accumulation scheme. MPs in the accumulation scheme may elect to enter into a salary sacrifice arrangement to increase the contributions made to their nominated superannuation fund.<sup>48</sup>

Commonwealth law provides rules on when MPs in the accumulation scheme can access their superannuation balance (which consists of contributions and investment earnings). Generally speaking, an existing or former MP can access their superannuation when they:

- reach their 'preservation age', which ranges from 55-60 years depending on date of birth, and retire (or commence a transition to retirement income stream); or
- turn 65 years old.

## Separation payment

Former MPs who are not members of the defined benefit schemes are eligible to receive a separation payment upon leaving the Parliament, to facilitate the completion of their parliamentary and electorate business and to support them as they transition from working as an MP.

This separation payment is equal to 3 months' basic salary (currently \$45,603) where an MP has served for up to one term, and 6 months' basic salary (currently \$91,207) where they have served for two or more terms. If an MP served for more than one term but less than two terms, the value of the payment is determined on a pro rata basis.<sup>49</sup>

MPs are eligible for the separation payment provided they have not been found guilty of corrupt conduct or a wilful breach of their duties.<sup>50</sup> The amount paid is not affected by the former MP's age or the period spent transitioning to other work. In the event that an MP dies while serving in the Parliament, the separation payment is made to a beneficiary.

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<sup>48</sup> PSAS Act, s41.

<sup>49</sup> PSAS Act, ss7E(3) and (4).

<sup>50</sup> PSAS Act, ss7E(1)(b).

Former MPs are required to repay the money if they return to the Parliament in the same term of the Parliament or in the term after the general election at which they ceased to be an MP.

The separation payment was introduced in 2019 to replace the former ‘resettlement allowance’, which was provided only to MPs who lost their seat at a general election or who did not seek re-election due to not being endorsed by their party. The resettlement allowance was introduced in 2013, following the Hazell Review. This payment aims in part to bridge the gap between the superannuation arrangements of MPs in the defined benefit schemes and those in the accumulation scheme.<sup>51</sup> As previously indicated, it is akin to the redundancy payments to which many workers are entitled on termination of their employment.

## **Overview of the tax treatment of the superannuation schemes**

The superannuation contributions and benefits of MPs in each of the superannuation schemes are impacted by various Commonwealth taxes, which can apply when the:

- money is contributed to the MP’s fund
- superannuation fund generates investment earnings
- MP withdraws money from their superannuation account or receives retirement benefits (e.g. a pension).

As a result of differences in how the schemes operate, MPs are subject to different tax arrangements depending on whether they are in a defined benefit scheme or the accumulation scheme. These arrangements have been taken into account in the Tribunal’s actuarial modelling outlined in chapter 5 and appendix D.

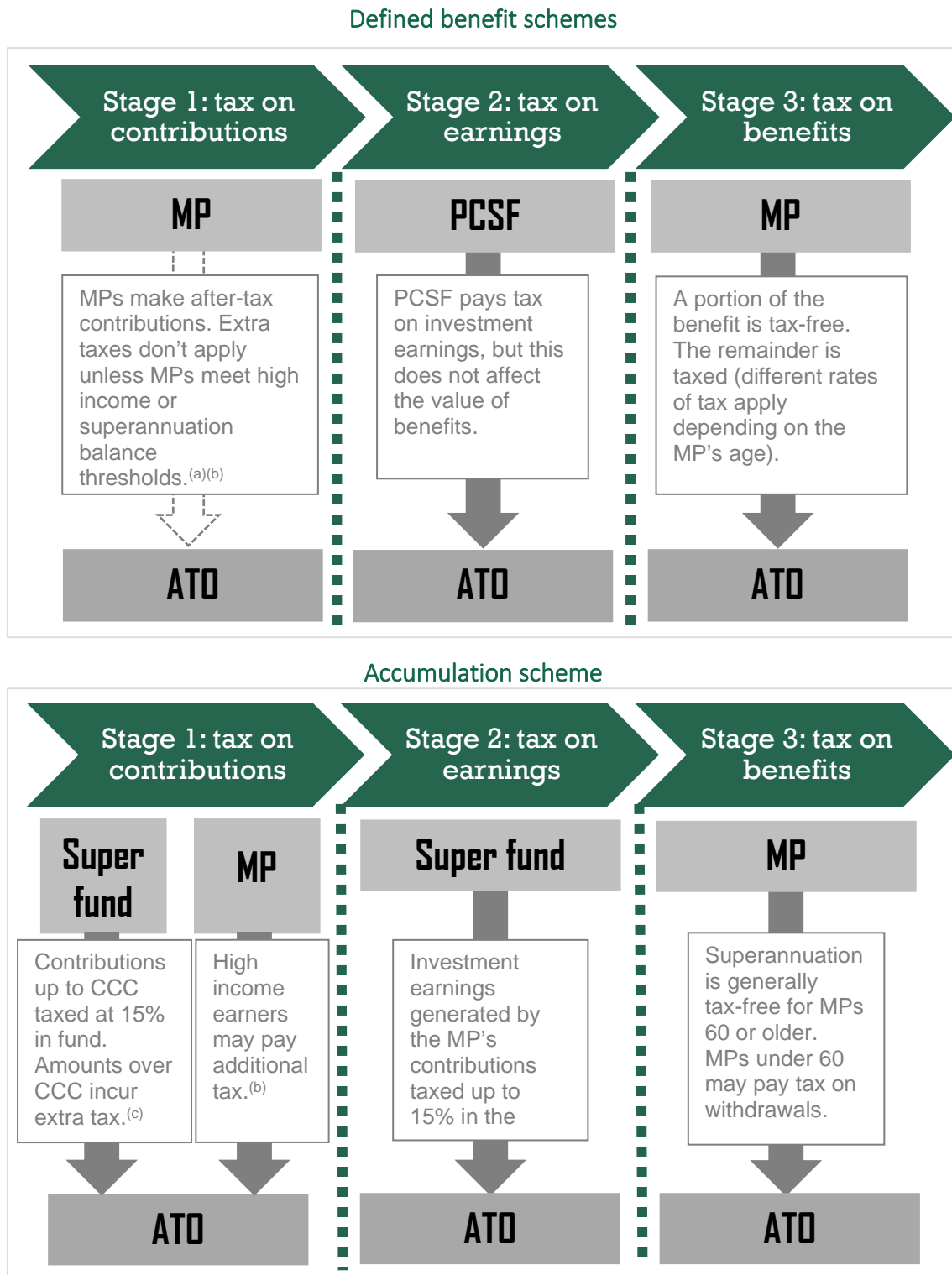
Grandfathering arrangements that are in place under Commonwealth law serve to limit the tax liability of existing MPs in the New Benefits Scheme. These arrangements typically apply only where a defined benefit account was opened prior to 12 May 2009. They do not apply to MPs in the accumulation scheme.

Figure 3.4 (overleaf) provides an overview of the tax arrangements for MPs in the defined benefit schemes and accumulation scheme. A detailed explanation of the tax arrangements is at appendix C.

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<sup>51</sup> Malcolm Hazell, *Independent Review of Victorian MPs’ Salary Entitlements, Allowances and Other Arrangements*, 6.

Figure 3.4: tax treatment of MP superannuation schemes



Notes: (a) MP contributions are not taxed unless the MP's total superannuation balance exceeds the transfer balance cap (\$1.6m for the 2020-21 financial year). Grandfathering arrangements are also in place which prevent MPs in the defined benefit scheme from having to paying tax on notional contributions made by the State. (b) MPs with combined income and contributions exceeding a certain threshold (\$250,000 for the 2020-21 financial year) may be required to pay Division 293 tax (appendix C). (c) CCC – concessional contributions cap (\$25,000 for the 2020-21 financial year). Amounts over the cap are included in assessable income and incur an additional tax charge. (d) The superannuation fund pays this tax on behalf of the MP, offsetting their investment returns.

## 3.3 Summary

Superannuation arrangements for Victorian MPs have historically reflected the unique nature of their role, and superannuation entitlements for Commonwealth MPs and the Victorian public service.

Superannuation arrangements for existing and former MPs largely depend on the date they first entered the Parliament.

Existing and former MPs are members of one of three schemes. Two of these are defined benefit schemes and are closed to new MPs. The majority of existing MPs are members of an accumulation scheme.

Since 2013, MPs have been provided with superannuation benefits above the minimum required under Commonwealth law, recognising in part that they do not enjoy the same employment standards and protections provided to most employees in Australia (e.g. leave entitlements).

Chapters 4 and 5 examine the key qualitative and quantitative differences between the defined benefit schemes and the accumulation scheme.

# 4 Qualitative differences between the schemes



This chapter analyses the key qualitative differences between the MP superannuation schemes. These relate to:

- when superannuation benefits can be accessed
- sources of uncertainty and risk
- flexibility offered to members in making contributions, investing those contributions and accessing benefits.

Chapter 5 outlines the quantitative differences between the schemes, with a particular focus on the superannuation benefits provided by the New Benefits Scheme and the accumulation scheme.

## 4.1 When superannuation benefits can be accessed

A key difference between the superannuation schemes is the age at which members are able to start accessing their benefits. These differences arise as a consequence of Commonwealth preservation rules, which prevent Australians from accessing their superannuation until they've satisfied a 'condition of release'.<sup>52</sup>

Under Commonwealth rules, former MPs who are members of the defined benefit schemes and who are eligible for a pension start to receive it as soon as they leave the Parliament.

Other former MPs (i.e. those in the accumulation scheme, or in the defined benefit schemes who receive their benefit as a lump sum) are ordinarily unable to access

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<sup>52</sup> *Superannuation Industry (Supervision) Regulations 1994* (Cth), Division 6.3 and Schedule 1.



their superannuation until they reach their preservation age.<sup>53</sup> An individual's preservation age ranges from 55-60 years depending on their date of birth.

As a result of these rules:

- members of the defined benefit schemes who are eligible for the pension can be certain that they will continue to receive income if they lose their seat in the Parliament, regardless of their age, subsequent engagement in employment and other sources of income
- other former MPs may find themselves without funds to support themselves and their families if they lose their seat prior to retirement age and cannot find another job.

Subject to eligibility requirements, former MPs in the accumulation scheme are provided with the separation payment when they leave the Parliament to support them as they transition from working as an MP. The maximum separation payment that a former MP can receive is equal to 6 months' basic salary. The limits to this payment may impact MPs who do not have alternative sources of support or income, are unable to find new paid employment for an extended period and/or are some time away from reaching their preservation age.

## 4.2 Sources of uncertainty and risk

The superannuation benefits provided to members of the defined benefit schemes and the accumulation scheme are influenced by different factors. In turn, these factors influence the types of risks faced by members of the schemes.

For all three schemes, the level of superannuation benefits received is influenced by years served as an MP and whether the MP held a specified parliamentary office.

For defined benefit schemes, the value of the superannuation benefit is also influenced by:

- the value of the BSP (from September 2019) or basic salary (prior to September 2019) during the years that a pension is paid
- how long the former MP (and their partner) lives after the former MP leaves the Parliament

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<sup>53</sup> Members are able to access their superannuation when they reach their preservation age if they retire or commence a transition to retirement income stream.



- the eligibility of the former MP's children (if any) for a reduced pension at the time that the former MP and/or their partner dies.<sup>54</sup>

For the accumulation scheme, the value of the superannuation benefit is also influenced by:

- the values of the basic and any additional salaries, and the value(s) of the prescribed percentage, during the years they served in the Parliament
- any voluntary superannuation contributions made by the former MP while serving in the Parliament (e.g. under a salary sacrifice arrangement)
- how the superannuation balance is invested, the performance of that investment option and any applicable superannuation fees or insurance premiums.

A relative advantage of the defined benefit schemes is the opportunity for financial security in retirement. Assuming an MP satisfies the eligibility requirements, they will receive a pension for the remainder of their and their partner's and eligible children's lives. However, if a former MP in the defined benefit schemes who is receiving a pension dies earlier than expected (e.g. due to an accident or unforeseen illness), this can effectively reduce the quantum of the total superannuation benefit.

The superannuation benefit accrued by an MP in the accumulation scheme may not be sufficient to fund their retirement. That might result, for example, in the case of an MP who retires involuntarily (e.g. as a result of being defeated at an election) and cannot obtain further employment.

## 4.3 Flexibility

Compared with the defined benefit schemes, the accumulation scheme provides members with a greater degree of choice and control over:

- which superannuation fund(s) they are a member of while serving in the Parliament
- the level of contributions they make to their superannuation fund(s)
- how their superannuation is invested, and therefore their level of risk exposure
- how they access their superannuation benefits.

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<sup>54</sup> Children under the age of 18 (under the age of 25 in the case of a full-time student) are eligible for a pension upon the MP's death. Children who have a disability as defined in the *Disability Services Act 1986* (Cth) and who were wholly or partially dependent on the MP for financial support are also eligible, regardless of age.

## Choice of superannuation fund and how superannuation is invested

MPs in the defined benefit schemes are required to be members of the PCSF. Former MPs who are eligible for a pension (and choose not to commute the whole amount to a lump sum) remain members and have their pensions paid out of the PCSF. Former MPs who are not eligible for a pension (or were eligible but chose to commute it to a lump sum) and who are unable to access their superannuation due to Commonwealth preservation rules are required to 'roll over' their benefit into another superannuation fund.

In contrast, existing and former MPs in the accumulation scheme can choose which fund or funds their superannuation balance is held with. This may be a SMSF.

Accumulation funds also provide members with options as to how their superannuation is invested, which affects the anticipated rate of return and the level of risk exposure. For example, an MP in the accumulation scheme may choose to:

- place their superannuation into a riskier, high-growth investment option earlier in life
- move their superannuation into a safer, more conservative investment option as they approach retirement.

## Control over contributions

Existing MPs in the defined benefit schemes are required to make after-tax contributions to the PCSF — 11.5 per cent of the BSP for the first 20.5 years of service. MPs holding a specified parliamentary office are also required to contribute a portion of their additional salary during that period.<sup>55</sup>

Existing MPs in the defined benefit schemes cannot choose to reduce or increase the rate at which they make contributions. They also cannot choose to make contributions from pre-tax salary (as concessional contributions). Further, MPs may be required to continue making contributions even if they are no longer accruing additional superannuation benefits. For example, an MP in the New Benefits Scheme who does not hold a specified parliamentary office accrues their

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<sup>55</sup> The contribution payable by an MP on their additional salary is calculated as 11.5 per cent of the BSP multiplied by the relevant additional salary percentage (as specified in the PSAS Act). Further information is at appendix B.

maximum pension benefit after 18 years of service but is required to make contributions for the first 20.5 years of service.

In comparison, MPs in the accumulation scheme are not required to make personal contributions, although they have considerable scope to do so. For example, an MP may choose to contribute up to 50 per cent of their pre-tax salary to superannuation under a salary sacrifice arrangement,<sup>56</sup> and may also choose to make after-tax contributions.

As explained in appendix C, contributions exceeding the Commonwealth government caps on concessional and non-concessional contributions incur an additional tax liability. MPs in the accumulation scheme are able to withdraw excess contributions. However, due to the nature of the PCSF, existing MPs in the defined benefit schemes are unable to make these withdrawals. As a result, they must pay the additional tax out of their own funds.

## **How superannuation can be accessed**

Former MPs in the defined benefit schemes may receive their superannuation benefit as one (or a combination of) the following:

- lump sum
- pension (subject to eligibility requirements).

Former MPs who are eligible for a pension may elect, within 3 months of becoming eligible, to commute all or part of their pension benefit to a lump sum. The value of the lump sum is calculated based on a formula in the PSAS Act. Former MPs are not able to commute their pension to a lump sum payment after that period, and otherwise cannot make any choices about how they receive their superannuation.

In comparison, former MPs in the accumulation scheme can access their superannuation as one or more of the following:

- lump sum
- account-based pension
- annuity purchased in the private market.

Former MPs in the defined benefit schemes who receive a lump sum payment may be restricted from accessing it due to Commonwealth preservation rules. Those MPs are instead required to transfer the lump sum into an accumulation-type account. Once those former MPs are allowed to access their superannuation

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<sup>56</sup> PSAS Act, s41.

under the preservation rules, they can do so using the options available to former MPs in the accumulation scheme.

If purchasing an annuity, the former MP has a variety of options regarding its structure. For example, they may purchase a lifetime annuity that will provide payments for the remainder of their lives, or a fixed-term annuity that provides payments for a set number of years.

Former MPs in the accumulation scheme also have more opportunities to change how they access their superannuation once they have retired. For example, the frequency and size of the payments can be changed for an account-based pension, and part or all of the funds can be withdrawn as a lump sum.

## 4.4 Summary

There are three key qualitative differences between the MP superannuation schemes. Two of these differences — the timing of when an MP can access their superannuation and the sources of risk and uncertainty — favour members of the defined benefit schemes. This is because members of the defined benefit schemes who meet the eligibility requirements for receiving a pension are able to access their superannuation upon leaving the Parliament and are eligible to receive a guaranteed income for the remainder of their lives. The third difference, related to flexibility, may favour members of the accumulation scheme as they have greater choice in respect of superannuation fund and level of contributions.

On balance, the Tribunal considers that these differences place MPs in the defined benefit schemes at a significant advantage compared with their counterparts in the accumulation scheme. This suggests that there is a potential inequality between those schemes.

Chapter 5 discusses quantitative differences in the superannuation benefits provided by the New Benefits Scheme and the accumulation scheme.

# 5 Quantitative comparison of the schemes



This chapter summarises the findings of actuarial modelling commissioned by the Tribunal to compare the expected financial benefits provided by the New Benefits Scheme and accumulation scheme under various scenarios. The modelling takes into account the unique features and rules of the schemes.

Appendix D provides further technical details about the modelling, including an explanation of key assumptions and methodologies.

## 5.1 Actuarial modelling approach

The Tribunal commissioned PwC, consultants, to carry out actuarial modelling to compare the expected benefits of the schemes using superannuation industry standard assumptions and methodologies.

The modelling compared the estimated superannuation benefits provided to various hypothetical MPs, who were assumed to have the option to join either the New Benefits Scheme or accumulation scheme. It is important to note that the modelling is purely hypothetical — and that this option did not and does not exist in practice — as the New Benefits Scheme was closed to new entrants in 2004.

The modelling incorporated both a:

- *backward-looking approach*: estimating the superannuation benefit of a hypothetical MP who was a member of either the accumulation scheme or New Benefits Scheme and who served in the Parliament for a period:
  - starting on or after 1 July 2004; and
  - ending on or before 30 June 2019



- *forward-looking approach*: forecasting the superannuation benefit of a hypothetical MP who was a member of either the accumulation scheme or New Benefits Scheme and who served in the Parliament for a period:
  - starting on or after 1 July 2020; and
  - ending on a future date.

The Tribunal used the backward-looking approach to understand how the superannuation benefits provided to existing and former MPs who joined the accumulation scheme from 2004 (as this was when the New Benefits Scheme was closed to new MPs) compared with those provided to their contemporaries in the New Benefits Scheme.

The Tribunal used the forward-looking approach to understand how recent and anticipated future changes to MP superannuation entitlements are likely to affect the expected benefits of the superannuation schemes.

The modelling was designed to provide a holistic comparison of the financial benefits of membership of the schemes, taking into account matters such as:

- superannuation contributions made or deducted from salary
- reversionary benefits
- disability and death benefits.

Key factors that influence the relative benefit provided by each scheme are:

- the age at which an MP joined the Parliament
- the length of time that an MP served in the Parliament
- the particular years that an MP served in the Parliament
- any specified parliamentary offices that an MP held
- for the accumulation scheme, how the superannuation balance was invested and the performance of that investment option.

## **Key economic and financial assumptions**

The modelling used industry standard assumptions to estimate the impact on financial benefits of actual and expected:

- inflation
- growth in MP salaries and superannuation contributions
- investment returns (table 5.1 overleaf).

Table 5.1: key economic and financial assumptions

Topic	Backward-looking approach	Forward-looking approach
Inflation	<ul style="list-style-type: none"> <li>Based on an industry standard assumption of 2.5% p.a.</li> </ul>	
Growth in MP salaries and superannuation contributions	<ul style="list-style-type: none"> <li>Historical data</li> </ul>	<ul style="list-style-type: none"> <li>MP salary and the BSP adjusted based on an industry standard assumption for wages growth, 4% p.a.</li> <li>Proposed increases to the SG percentage factored in<sup>(a)</sup></li> </ul>
Investment returns	<ul style="list-style-type: none"> <li>Reported returns generated by the “growth” investment option of the default MP fund, VicSuper</li> </ul>	<ul style="list-style-type: none"> <li>Based on an industry standard assumption of 6% p.a. (net of investment fees and tax)</li> </ul>

Notes: (a) Under the *Superannuation Guarantee (Administration) Act 1992* (Cth), the SG percentage is to progressively increase to 12 per cent by 1 July 2025. The State makes contributions for existing MPs in the accumulation scheme equal to the SG percentage plus 6 per cent.

## Key assumptions and methodologies to enable comparisons

To enable comparisons between the schemes, the modelling used several methodologies and made a series of key assumptions regarding:

- *Calculation of the expected benefit*: presented in June 2020 dollars, after-tax, representing the expected superannuation benefit of an MP upon leaving the Parliament.
- *Value of pension benefit*: the expected future pension payments are converted to a present value in June 2020 dollars, after tax, using a 6.5 per cent p.a. discount rate. This represents the amount which if it was invested in 2020 and earned 6.5 per cent each year, would be expected to be enough to meet the future pension payments under the New Benefits Scheme rules.
- *Amount of after-tax superannuation contributions*: as MPs in the New Benefits Scheme are required to make after-tax contributions to the PCSF, MPs in the accumulation scheme are assumed to make equivalent contributions to their superannuation fund to compare the schemes’ benefits on a like-for-like basis.
- *Treatment of invalidity and death benefits*: as the New Benefits Scheme includes special rules for benefits provided in the event of an MP’s invalidity or death, modelling of the accumulation scheme deducts the cost of taking equivalent invalidity and death insurance from the MP’s superannuation balance.

- *Treatment of the separation payment*: the value of the separation payment (and of the former resettlement allowance) is included in the calculation of financial benefits for MPs in the accumulation scheme.

## Other key assumptions and data

The modelling also took into account that pension eligibility requirements for MPs in the New Benefits Scheme vary depending on whether they leave the Parliament voluntarily or involuntarily.

An MP is considered to have left the Parliament involuntarily if they are defeated at an election or are aged at least 60 years when they leave the Parliament. In either of these circumstances, an MP is entitled to a pension if they have served for at least 8 years; otherwise, they are deemed to have retired voluntarily and must serve for at least 12 years to be eligible for the pension.<sup>57</sup>

In practice, some MPs would have to serve longer than 8 years (possibly up to 12 years) in order to leave the Parliament involuntarily and meet the eligibility requirements for the pension. This would occur if the MP had served less than 8 years by the end of their second term. While Victoria moved to fixed parliamentary terms following reforms introduced in 2003,<sup>58</sup> terms are not exactly 4 years in length. As such, an MP who lost their seat after serving two terms could still fall short of the 8-year eligibility threshold.<sup>59</sup>

Outcomes for MPs who served at least 12 years are not affected by the MP's reason for leaving the Parliament.

MPs in the New Benefits Scheme who are eligible for the pension can choose to convert all or part of the pension into a lump sum. For comparative purposes, the modelling assumes that the hypothetical MP takes either the entirety of their benefit as a pension (provided they are eligible) or commutes the entire pension into a lump sum.

Finally, to help select scenarios that were representative of existing and former MPs, the Tribunal drew upon the following de-identified data provided by the

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<sup>57</sup> Under certain circumstances, an MP may be eligible for a pension even if they do not meet these criteria. See appendix B for further details.

<sup>58</sup> *Constitution (Parliamentary Reform) Act 2003* (Vic).

<sup>59</sup> The *Electorate Act 2002* (Vic) requires a general election to be held every four years on the last Saturday of November.



Department of Parliamentary Services about MPs who left and did not re-join the Parliament during the last ten years:<sup>60</sup>

- age upon entering the Parliament (range: 26 – 62 years, average: 43 years)
- number of years served in the Parliament (range: 0.5 – 35 years, average: 12 years)
- age upon leaving the Parliament (range: 30 – 74 years, average: 55 years)
- number of years (if any) in which they held a specified parliamentary office (range: 0 – 20 years, average: 6)<sup>61</sup>
- which specified parliamentary offices (if any) they held.

Based on this data, a ‘base case’ or ‘representative MP’ scenario was constructed, whereby the representative MP entered Parliament at age 43, served for 12 years and did not hold a specified parliamentary office.

## 5.2 Outcomes of modelling

The Tribunal modelled the following indicative hypothetical scenarios to understand how factors such as the age at which an MP enters the Parliament and their length of service can affect estimated superannuation benefits:

- **a representative MP scenario:** MP enters the Parliament at age 43 and serves 12 years, reflecting the average starting age and length of service of MPs who left the Parliament in the last ten years
- **an older, longer serving MP scenario:** MP enters at age 53 and serves 16 years (15 years for the backward-looking approach, as that is the maximum number of years that can be modelled)
- **an older, shorter serving MP scenario:** MP enters at age 53 and serves 8 years
- **a younger, longer serving MP scenario:** MP enters at age 33 and serves 16 years (15 years for the backward-looking approach, as that is the maximum number of years that can be modelled)
- **a younger, shorter serving MP scenario:** MP enters at age 33 and serves 8 years
- **a one-term MP scenario:** MP enters at age 43 serves for 4 years
- **an office holder scenario:** MP joins at age 43 and serves for 12 years, becoming a Minister half-way through their service.

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<sup>60</sup> Values have been rounded to the nearest year.

<sup>61</sup> This value includes data for MPs who did not hold a specified parliamentary office. The average for MPs who held at least one specified parliamentary office is 8 years.

The results indicate that the New Benefits Scheme provides a significantly greater superannuation benefit than the accumulation scheme for almost all scenarios modelled. The relative difference in outcomes between the schemes is particularly pronounced in the hypothetical examples where MPs leave involuntarily having served at least 8 years (and therefore are eligible for a pension under the New Benefits Scheme). The relative difference is less pronounced in examples where MPs served for longer periods (e.g. 16 years) as the benefits provided by the accumulation scheme reflect compounding investment returns.

These results hold for both the backward- and forward-looking scenarios. For example, for the representative MP scenario:

- in the backward-looking approach, the estimated accumulation scheme benefit is around \$0.52 million, whereas the New Benefits Scheme lump sum benefit is around \$0.96 million (or around 84 per cent higher) and the estimated New Benefits Scheme pension benefit is around \$2.34 million (or around 350 per cent higher)
- in the forward-looking approach, the estimated accumulation scheme benefit is around \$0.70 million, whereas the estimated New Benefits Scheme lump sum benefit is around \$1.09 million (or around 55 per cent higher) and the estimated New Benefits Scheme pension benefit is around \$2.96 million (or around 320 per cent higher).

The disparity between the schemes widens where an MP holds a specified parliamentary office, or once they have served the minimum number of years required to be eligible for the pension (8 years assuming involuntary exit).

The results of both the backward- and forward-looking scenarios are summarised in tables 5.2 and 5.3 (overleaf).

Table 5.2: estimated superannuation outcomes for hypothetical MPs who joined the Parliament on 1 July 2004

Example	Outcome (\$m, June 2020 dollars) <sup>(a)</sup>		
	Accumulation scheme	New Benefits Scheme <sup>(b)</sup>	
		If wholly taken as a lump sum	If wholly taken as a pension
Representative MP	0.52 <sup>(c)</sup>	0.96	2.34
Older, longer serving MP	0.68 <sup>(d)</sup>	0.93	2.32
Older, shorter serving MP	0.18	0.81	1.89
Younger, longer serving MP	0.77 <sup>(d)</sup>	1.10	2.92
Younger, shorter serving MP	0.23	Voluntary exit: 0.29 Involuntary exit: 0.81	Voluntary exit: N/A Involuntary exit: 2.23
One-term MP	0.12	Voluntary exit: 0.15 Involuntary exit: 0.23	N/A
Office holder	0.70 <sup>(c)</sup>	1.41	3.31

Notes: (a) Commonwealth grandfathering arrangements reduce the tax liability of existing MPs in the New Benefits Scheme. The effect of these arrangements have been taken into account to calculate these outputs. (b) If the MP served less than 12 years and was aged less than 60 years when they left the Parliament, their benefit differs depending on whether they left voluntarily or involuntarily (MPs who are aged at least 60 years are deemed to leave involuntarily). (c) Includes the resettlement allowance, which was provided to MPs who left the Parliament from 1 July 2013, subject to eligibility requirements. (d) Includes the separation payment, which replaced the resettlement allowance and was provided to MPs who left the Parliament from 29 October 2018, subject to eligibility requirements.

Source: PwC modelling.

Results using the forward-looking approach are shown in table 5.3 (overleaf). The Tribunal used those results to understand the relative benefits of the schemes based on their current rules.

Table 5.3: estimated superannuation outcomes for hypothetical MPs who joined the Parliament on 1 July 2020

Example	Outcome (\$m, June 2020 dollars) <sup>(a)</sup>		
	Accumulation scheme	New Benefits Scheme <sup>(b)</sup>	
		If wholly taken as a lump sum	If wholly taken as a pension
Representative MP	0.70	1.09	2.96
Older, longer serving MP	0.93	1.01	2.86
Older, shorter serving MP	0.38	0.89	2.24
Younger, longer serving MP	1.03	1.31	3.64
Younger, shorter serving MP	0.46	Voluntary exit: 0.27 Involuntary exit: 0.89	Voluntary exit: N/A Involuntary exit: 2.52
One-term MP	0.20	Voluntary exit: 0.14 Involuntary exit: 0.23	N/A
Office holder	0.92	1.33	3.96

Notes: (a) Commonwealth grandfathering arrangements reduce the tax liability of existing MPs in the New Benefits Scheme. As these arrangements typically only apply where a defined benefit account was opened prior to 12 May 2009, these results have been calculated on the basis that these arrangements would not apply. (b) If the MP served less than 12 years and was aged less than 60 years when they left the Parliament, their benefit differs depending on whether they left voluntarily or involuntarily (MPs who are aged at least 60 years are deemed to leave involuntarily). Source: PwC modelling.

Outcomes for MPs in the accumulation scheme are higher using the forward-looking approach than for the backward-looking approach, and closer to outcomes provided by the New Benefits Scheme. This demonstrates that changes to the accumulation scheme over time, in particular the increase to the contribution rate in 2013 and the introduction of the resettlement allowance/separation payment, have helped to bridge the gap between the schemes.

The extent to which the gap has been bridged varies according to the scenario analysed:

- *representative MP*: assuming the benefit is taken as a pension, the New Benefits Scheme provides a 320 per cent greater benefit than the accumulation scheme in the forward-looking scenario, compared to 348 per cent in the backward-looking scenario
- *one-term MP*: the New Benefits Scheme provides a 13 per cent greater benefit than the accumulation scheme in the forward-looking scenario, compared to 97 per cent in the backward-looking scenario.

These differences are illustrated by figure 5.1.

Figure 5.1: difference in benefits between accumulation scheme and New Benefits Scheme for backward- and forward-looking approaches, assuming involuntary exit



Notes: Rep. = Representative MP scenario. Benefit for New Benefits Scheme shown assumes it is taken as a pension in all scenarios, with the exception of the one-term scenario as the eligibility criteria for receiving a pension are not met in that scenario.

Source: Tribunal calculations based on PwC modelling.

However, the results indicate that there are some circumstances where the accumulation scheme may provide a greater superannuation benefit. For example, this is the case for MPs who leave the Parliament voluntarily and serve less than 12 years (table 5.3 above).

These results are provided for illustrative purposes only, and were calculated using a range of modelling assumptions explained above. They should not be taken to represent the actual or possible superannuation outcomes of particular MPs serving in the Parliament.

## 5.3 Effect of particular variables on benefits

PwC's modelling shows that the difference in benefits provided by the schemes is affected by several factors. Some key factors are:

- the length of the MP's service in the Parliament
- the age at which an MP joins the Parliament
- the rate at which investments generate returns.

The remainder of this chapter examines how these matters affect relative outcomes between the schemes.

### Length of an MP's service

The total superannuation benefit provided to MPs in the accumulation scheme will generally increase in proportion to the time they serve in the Parliament, although their overall superannuation balance may be adversely affected by negative investment returns in some years.

The relationship between length of service and the size of the superannuation benefit is not as straightforward for the New Benefits Scheme.

On the one hand, the size of the benefit increases significantly once the MP has served for long enough to be eligible for the pension (either 8 or 12 years, depending on whether they leave the Parliament involuntarily or voluntarily, respectively). On the other hand, the longer an MP serves in the Parliament, the fewer years they will receive the pension after they leave. This means that their potential superannuation benefit will start to decrease if they remain in the Parliament after they have accrued their maximum level of benefit.<sup>62</sup> For an MP who enters the Parliament at age 43, this will occur after 18 years of service.

This suggests that an MP who serves for an extended period of time (i.e. more than 30 years) might receive a greater benefit as a member of the accumulation scheme, depending on other factors such as age and investment returns. However, the Tribunal decided not to model such an example as it is uncommon

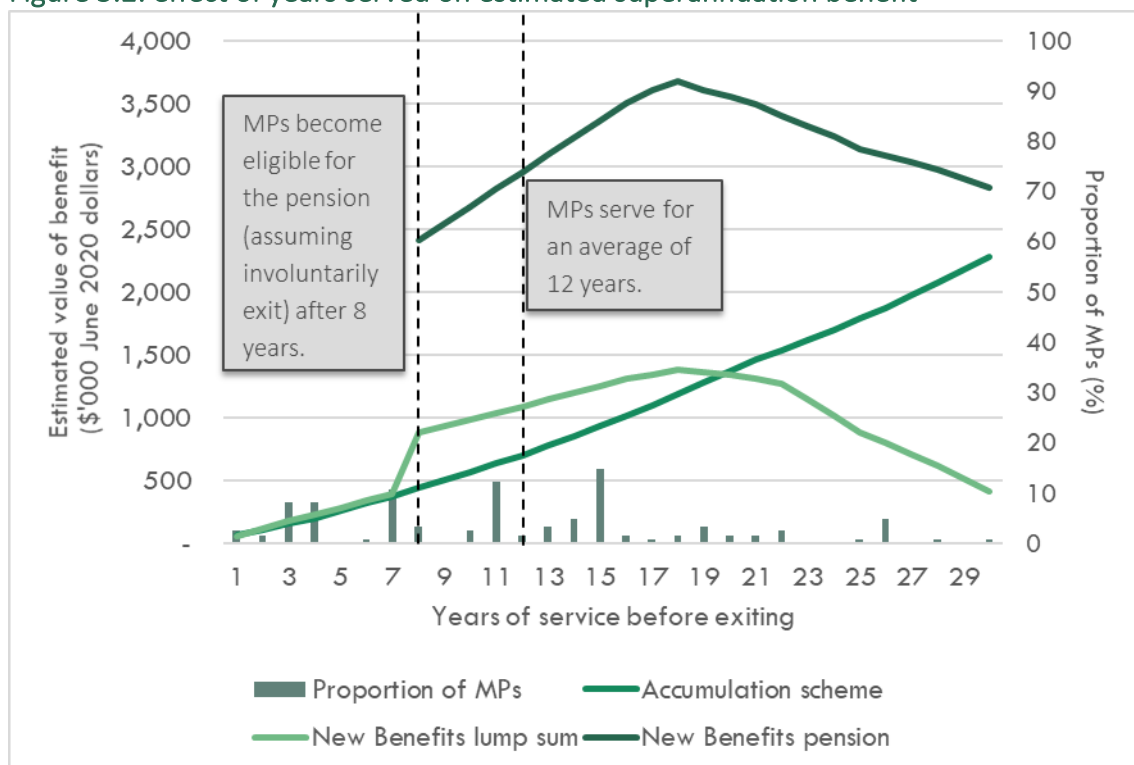
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<sup>62</sup> The size of the lump sum benefit (relative to the proportion of the pension converted) also begins to decrease once an MP reaches 66 years of age, as the commutation factor begins to decrease.

for an MP to remain in the Parliament for this long,<sup>63</sup> and would therefore not serve as a realistic point of comparison.

Figure 5.2 shows the estimated superannuation benefit of an MP who joined the Parliament at age 43 on 1 July 2020 and left involuntarily, depending on their length of their service and the superannuation scheme they were a member of (assuming the New Benefits Scheme had remained open). The bars at the bottom of figure 5.2 (which relate to the vertical axis to the right of the figure) show the proportion of MPs (out of those who left the Parliament in the last 10 years) who left after serving for a given number of years.<sup>64</sup>

**Figure 5.2: effect of years served on estimated superannuation benefit**



Note: Results are shown for a hypothetical MP who joined the Parliament on 1 July 2020 aged 43 years, assuming involuntary exit.  
 Source: Tribunal calculations based on PwC modelling.

## The age at which an MP joins the Parliament

Subject to eligibility requirements, former MPs in the New Benefits Scheme may receive a pension as soon as they leave the Parliament.<sup>65</sup> Typically, the older an individual is, the fewer years into the future they are expected to live. For that

<sup>63</sup> According to data provided to the Tribunal by the Department of Parliamentary Services, less than 2 per cent of MPs who left (and did not re-join) the Parliament during the last 10 years had served for 30 years or more.

<sup>64</sup> The proportions are based on data for MPs who left (and did not re-join) the Parliament during the past 10 years.

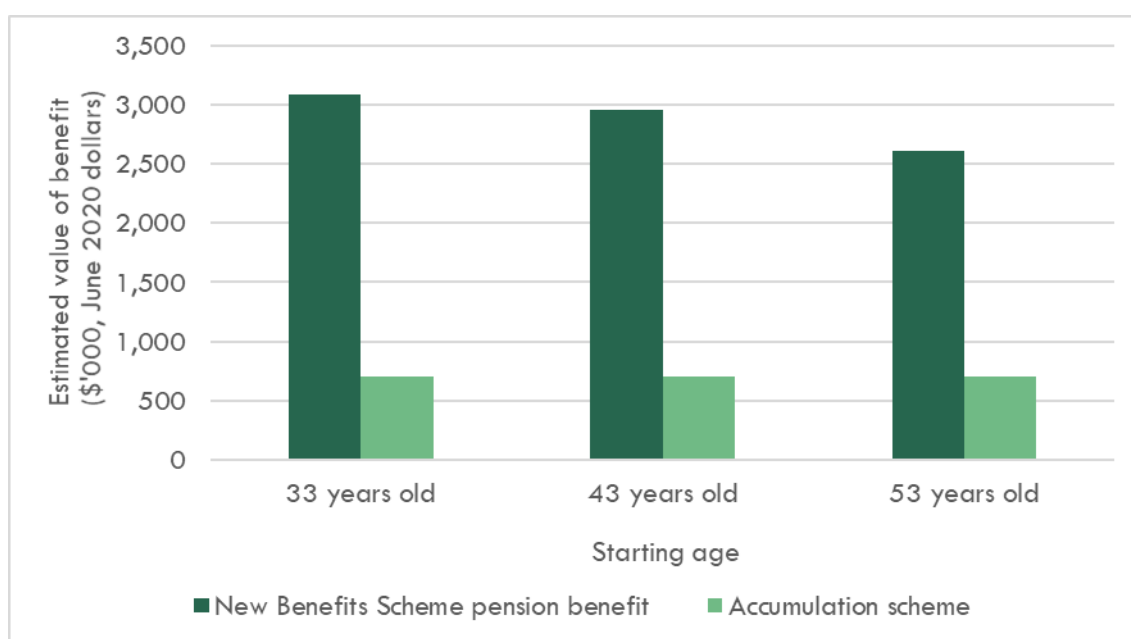
<sup>65</sup> The pension may also revert to the former MP's partner and/or eligible children following the MP's death.

reason, the estimated value of the pension benefit is inversely correlated to an MP's age.

In comparison, the value of superannuation benefit provided by the accumulation scheme is largely unaffected by an MP's age.<sup>66</sup>

The difference in the value of the pension benefit provided by the New Benefits Scheme and the superannuation benefit provided by the accumulation scheme is smaller for MPs who join at an older age, assuming the length of service stays the same (figure 5.3).

**Figure 5.3: effect of starting age on estimated superannuation benefit**



Source: Tribunal calculations based on PwC modelling.

## Rate of at which investments generate returns

The modelling for the forward-looking scenario assumed that future investment returns averaged 6 per cent p.a. (net of investment fees and tax). This is based on industry standard assumptions used by the Australian Securities and Investments Commission's (ASIC) Moneysmart superannuation calculator.<sup>67</sup>

Outcomes for MPs in the accumulation scheme are positively correlated with the returns generated by their fund. If investment returns were higher than 6 per cent, outcomes for the MPs in the accumulation scheme would be higher than shown

<sup>66</sup> The modelling shows a small reduction in outcomes for relatively older MPs in the accumulation scheme, due to them being required to pay higher insurance costs to obtain death and disability coverage at equivalent levels to that provided by the New Benefits Scheme.

<sup>67</sup> ASIC, 'Superannuation calculator', accessed 14 September 2020, <https://moneysmart.gov.au/how-super-works/superannuation-calculator>.



in the examples above, and the difference in outcomes provided by the schemes would be smaller. Conversely, if investment returns were lower than 6 per cent, the difference in outcomes between the schemes would be more pronounced.

Figure 5.4 shows how changing the assumed investment return rate affects the difference in outcomes for a hypothetical MP who joined the Parliament at age 43 on 1 July 2020 and left involuntarily after 12 years.

**Figure 5.4: effect of investment returns on estimated superannuation benefits**



Note: Results shown are the difference in benefits provided by the New Benefits Scheme and accumulation scheme, for a hypothetical MP who joined the Parliament at age 43 on 1 July 2020 and left involuntarily after 12 years. Source: Tribunal calculations based on PwC modelling.

## 5.4 Summary

The results of the modelling undertaken by PwC show that the New Benefits Scheme provides a significantly greater superannuation benefit than the accumulation scheme in most circumstances. This is the case for both the backward- and forward-looking scenarios. The difference is most pronounced once an MP has served for long enough to be eligible for a pension (8 years assuming involuntary exit).

The results also show that changes to the superannuation arrangements, in particular the 2013 changes to the accumulation scheme, have reduced the difference in benefits between the schemes.

Finally, the modelling shows how factors such as length of service, the age at which an MP enters the Parliament and investment returns influence the size of the superannuation benefit and the relativity between the two schemes.

These findings demonstrate that there remains considerable inequality between the New Benefits Scheme and the accumulation scheme with regard to the level of benefits each provides.

Chapters 6 and 7 assess the potential inequalities between the schemes arising from their qualitative and quantitative differences and the potential irregularities between the schemes.

# 6 Assessment of potential inequalities



This chapter outlines options identified by the Tribunal for addressing the potential inequalities between the New Benefits Scheme and the accumulation scheme.

## 6.1 Options for addressing inequalities

The Tribunal has identified several options for addressing the inequalities between the New Benefits Scheme and the accumulation scheme:

1. **Increase the superannuation contributions made by the State for MPs in the accumulation scheme.** For example, the State could increase the contribution rate to 18 per cent of salary, to fast-track increases that are expected by 1 July 2025 due to planned increases to the SG percentage.<sup>68</sup>
2. **Reopen the New Benefits Scheme to future MPs.** Existing MPs in the accumulation scheme could be given the opportunity to buy into the New Benefits Scheme.
3. **Open a new MP defined benefit scheme or a hybrid scheme.** Examples of schemes that could be used as a basis for a new MP defined benefit scheme include the ESSSuper scheme for Victorian operational emergency service employees and the United Kingdom MP pension scheme.
4. **Provide MPs in the accumulation scheme with an additional payment when they leave the Parliament equivalent to the additional benefits they would have received in the New Benefits Scheme.** As suggested in a submission, the relevant calculation could be carried out by an actuary when the MP leaves the Parliament or using a set formula.
5. **Increase the separation payment for former MPs.** This option was also suggested in submissions. Former MPs could also be given the option of

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<sup>68</sup> *Superannuation Guarantee (Administration) Act 1992* (Cth).



receiving the separation payment in instalments over several years, to provide them with support for a longer period after they leave the Parliament.

6. **Provide existing and former MPs with enhanced transitional support to help them obtain employment after leaving the Parliament.** Such support could include career or financial counselling, resume building, networking support and outplacement services.

## 6.2 The Tribunal's considerations

To assess the options identified to address potential inequalities between the schemes, the Tribunal was guided by the following key considerations:

- superannuation and separation arrangements for MPs in other Australian jurisdictions and across the Victorian public sector, as well as in the broader economy
- whether the current superannuation arrangements of MPs take into account their relatively unique role and employment arrangements
- the costs and benefits of particular options, for example, the financial cost to the State of Victoria
- other matters raised in submissions.

### **Superannuation arrangements for MPs, the public sector and the broader economy**

The review found that the superannuation entitlements for Victorian MPs, including those in the accumulation scheme, compare favourably to those of MPs in other Australian jurisdictions, other Victorian public sector roles and Australians more generally.

#### **Comparison with MPs in other jurisdictions**

All Australian jurisdictions have closed their MP defined benefit schemes to new MPs and have replaced them with an accumulation scheme. These changes occurred as a result of mounting community and political pressure to close the bespoke superannuation schemes for Australian MPs (and certain other public sector roles) due to their perceived generosity (appendix A). As a result of the closure of the MP defined benefit schemes, MPs in each jurisdiction have received lower superannuation entitlements than their predecessors — meaning that the potential inequality identified by the Tribunal is not unique to Victoria's MPs.

Rather, it is an inevitable consequence of the superannuation entitlements of MPs being more closely aligned to those of other Australians.

However, of all Australian jurisdictions, Victorian MPs in the accumulation scheme receive the highest superannuation contributions in percentage terms (SG percentage plus 6 per cent, currently 15.5 per cent). Further, increases to the SG percentage have been legislated by the Commonwealth. The value of this contribution in dollar terms is also comparatively high, exceeded only by the Commonwealth and South Australia.

### **Comparison with other Victorian public sector roles**

Most public sector defined benefit schemes were closed in the mid-1990s as a result of the unsustainable financial burden they placed on the State of Victoria (appendix A). Since that time, with few exceptions, Victorian public sector employees have been required to join an accumulation scheme and are entitled only to the minimum employer superannuation contributions required under Commonwealth law (currently the SG percentage of 9.5 per cent).

The closure of the public sector defined benefit schemes means that, similar to MPs, new public sector employees receive lower superannuation entitlements than those who began their career earlier.

### **Comparison with the general economy**

The Tribunal understands that most employees are not entitled to superannuation contributions above the minimum requirement under Commonwealth law. As noted in chapter 2, the majority of enterprise agreements do not provide employees with superannuation entitlements above the SG percentage.<sup>69</sup>

## **The unique role and employment arrangements of MPs**

The Tribunal recognises that MPs have a role which is unlike almost any other, and do not have access to many of the employment standards and conditions afforded to other workers. Further, they face the risk of electorate defeat at each election, meaning that they may lose their job through no fault of their own.

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<sup>69</sup> Commonwealth Department of Jobs and Small Business, Workplace Agreements Database, 2019.

The superannuation arrangements and related entitlements of MPs were designed to address these matters:

- the increase in superannuation contributions for MPs in the accumulation scheme was in part provided to recognise that MPs do not receive accrued recreation and long service leave<sup>70</sup>
- the separation payment (and the former resettlement allowance) are provided to assist MPs to re-establish themselves in professional or business life or the workforce, and is akin to a redundancy payment provided to some other employees.<sup>71</sup>

The Tribunal notes that work insecurity is not unique to MPs — it also affects many other Australians. Approximately 13 per cent of public sector employees, and 4 per cent of private sector employees, are employed on fixed-term contracts, based on 2018 data. Further, approximately a quarter of employees are employed on a casual basis (i.e. without paid leave entitlements).<sup>72</sup>

Modelling conducted by the Tribunal indicates that a hypothetical MP who joins the Parliament in 2020 and serves for 12 years will leave the Parliament with approximately \$390,000 in entitlements in real (June 2020) terms<sup>73</sup> from their parliamentary service alone. In comparison, in 2017-18 the median superannuation balance of Australians that are aged 65-74 years was \$225,700.

If that hypothetical MP chose to make additional contributions, equivalent to those that MPs in the New Benefits Scheme are required to make (i.e. approximately 11 per cent of salary), they would leave the Parliament with approximately \$700,000 in benefits in real (June 2020) terms. As a point of comparison, this exceeds the \$640,000 benchmark set by the Association of Superannuation Funds of Australia for a superannuation balance required by a couple for a comfortable retirement.<sup>74</sup>

As part of assessing the impact of potential inequalities, the Tribunal notes that disadvantageous changes to MP superannuation in the past were generally subject to grandfathering provisions so that they do not unfairly impact on individuals who

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<sup>70</sup> Malcolm Hazell, *Independent Review of Victorian MPs' Salary Entitlements, Allowances and Other Arrangements*, 31-32.

<sup>71</sup> Malcolm Hazell, *Independent Review of Victorian MPs' Salary Entitlements, Allowances and Other Arrangements*, 32.

<sup>72</sup> ABS, *Microdata: Characteristics of employment, Australia*, cat. no. 6333.0.00.001, August 2018, presented in Geoff Gilfillan, *Trends in use of non-standard forms of employment*, Research Paper Series, 2018-19 (Commonwealth of Australia: Canberra, 10 December 2018).

<sup>73</sup> Includes the value of the separation payment, and the cost of disability and death insurance has been deducted.

<sup>74</sup> Association of Superannuation Funds of Australia, *ASFA Retirement Standard*, 2018.

made decisions based on previous arrangements. This has facilitated certainty for MPs in relation to their superannuation arrangements.

However, the Tribunal acknowledges that some MPs may still face the risk of inadequate retirement income — particularly if they lose their seat early on in their parliamentary careers and are unable to accumulate sufficient superannuation contributions by other means.

### **The costs and benefits of particular options**

The Tribunal notes that any option that would fully address the quantitative differences between the New Benefits Scheme and accumulation scheme would come at a substantial cost to the State. For example, the Hazell Review estimated that the cost to the State of re-opening the New Benefits Scheme at the time would be between \$6 million and \$7 million p.a.

In considering these costs, the Tribunal has also been mindful of Victoria's current challenging economic and fiscal environment and outlook arising from the COVID-19 pandemic. The economic update released by the Department of Treasury and Finance in July 2020 said that:

- the coronavirus pandemic represents the biggest economic shock the world and Victoria have experienced since the Great Depression
- the general government sector operating result in 2019-20 is expected to be a deficit of around \$7.5 billion
- real gross state product is predicted to fall by 5.25 per cent in the 2020 calendar year
- Victoria's unemployment rate could rise to 9 per cent in the September quarter.

While the current COVID-19 related economic situation, and the effect it is having on many Victorians, is a clear factor against the superannuation entitlements of MPs being increased, other factors considered by the Tribunal also weigh against increasing the superannuation and separation entitlements of MPs.

### **Other matters raised in submissions**

One submission to the review proposed that the Tribunal take into account the fact that retirement incomes for women in Australia are significantly and systemically less than those for men. It pointed out that women MPs are more likely to enter the Parliament already having experienced financial disadvantage

through the superannuation system. It also noted that women MPs are more likely to be in the cohort of MPs ineligible for the New Benefits Scheme, further entrenching the gender gap in retirement income.

While the Tribunal recognises these issues, it considers they are better addressed by dealing with their underlying causes and targeted solutions rather than through changes to the superannuation arrangements for all MPs in the accumulation scheme.

Two submissions said that there is anecdotal evidence that some MPs may struggle to find employment after leaving the Parliament.

The Tribunal notes the difficulties some former MPs face in finding further employment may be related to their age upon leaving the Parliament. Around 70 per cent of MPs who left the Parliament in the last 10 years were at least 50 years old when they left. The Australian Human Rights Commission has found that Australians aged 50 or older spend longer looking for employment on average than younger Australians.<sup>75</sup>

Based on the considerations explained above, the advantages and disadvantages of the options identified by the Tribunal are listed in table 6.1 (overleaf).

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<sup>75</sup> Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability* (Australian Human Rights Commission: Sydney, 2016), 11.



Table 6.1: options for addressing inequalities

Option	Advantages	Disadvantages
1. Increase contributions for the accumulation scheme	<ul style="list-style-type: none"> <li>Depending on the increased contribution rate, would enhance equity between the schemes</li> <li>Administratively simpler, as it does not involve transferring MPs into a new scheme</li> </ul>	<ul style="list-style-type: none"> <li>Rate of contribution for Victorian MPs is highest among Australian jurisdictions and this would increase that gap</li> <li>Depending on the increased contribution rate, would be substantially different from community standards for employee superannuation and arrangements for MPs in other jurisdictions</li> <li>May result in MPs in the accumulation scheme incurring additional tax due to breaching tax caps</li> </ul>
2. Reopen New Benefits Scheme, including existing MPs being given the option to buy into the scheme	<ul style="list-style-type: none"> <li>Would enhance equity as all MPs performing the same role would have access to the same scheme</li> </ul>	<ul style="list-style-type: none"> <li>Substantially different from community standards for employee superannuation and arrangements for MPs in other Australian jurisdictions</li> <li>Grandfathering arrangements would not apply to new members, therefore some inequalities would remain</li> <li>Administratively complex option, as it involves moving MPs between schemes with uncertainty about the price of buying into the New Benefits Scheme</li> <li>Likely to be a high cost option for the State</li> </ul>
3. Open a new MP defined benefit scheme or a hybrid scheme	<ul style="list-style-type: none"> <li>Could enhance equity by addressing qualitative differences between the New Benefits Scheme and accumulation scheme</li> </ul>	<ul style="list-style-type: none"> <li>Substantially different from community standards for employee superannuation and arrangements for MPs in other Australian jurisdictions</li> <li>Grandfathering arrangements would not apply to new members, therefore some inequalities would remain</li> <li>Administratively complex option, as it involves moving MPs between schemes</li> </ul>

Option	Advantages	Disadvantages
4. When an MP leaves the Parliament, they receive payment(s) equivalent to the additional benefits they would have received in the New Benefits Scheme	<ul style="list-style-type: none"> <li>• Would fully address the quantitative differences between the schemes</li> </ul>	<ul style="list-style-type: none"> <li>• Substantially different from community standards for employee superannuation and arrangements for MPs in other Australian jurisdictions</li> <li>• Administratively complex option, as it would require an actuarial calculation to determine the additional amount, and whether it would be provided as a pension or lump sum</li> <li>• If a pension was used as the payment, this would likely be the costliest option to the State</li> </ul>
5. Increase the separation payment	<ul style="list-style-type: none"> <li>• Depending on the size of the increase, would enhance equity by providing eligible MPs on the accumulation scheme with extra financial support after they leave the Parliament</li> <li>• Administratively simpler relative to other options, as it does not involve transferring MPs into a new scheme and avoids modifying the existing scheme</li> </ul>	<ul style="list-style-type: none"> <li>• Depending on the size of the increase, could lead to the separation payment in Victoria being more generous than that offered in other Australian jurisdictions</li> </ul>
6. Provide MPs with support to obtain employment after leaving the Parliament	<ul style="list-style-type: none"> <li>• Recognises that some MPs may find it difficult to secure employment upon leaving Parliament</li> </ul>	<ul style="list-style-type: none"> <li>• Unknown if additional support will be taken up by MPs or the extent to which it will be effective in achieving the objective</li> </ul>

## 6.3 Conclusion and recommendations

The Tribunal has found that the superannuation arrangements currently provided to MPs are favourable when compared to those provided in other jurisdictions, public sector employees and in the general labour market. Further, the existing superannuation arrangements have been designed to take into account the relatively unique role and employment arrangements of MPs. The Tribunal considers that it would be out of step with arrangements in the broader economy and with community standards to:

- open (or re-open) a defined benefit scheme for MPs not currently entitled to such a scheme (options 2 and 3), or
- increase the superannuation benefits of MPs above the entitlements they already receive (options 1 and 4); or
- increase the separation payment for MPs in the accumulation scheme (option 5).

On this basis, in relation to the inequalities between the schemes, **the Tribunal recommends that there be no changes to the superannuation arrangements for Victorian MPs at this time.**

### **Enhanced transitional support for MPs leaving the Parliament**

The Tribunal does recognise that some MPs may experience difficulties in finding employment after leaving the Parliament. While comprehensive research has not been conducted on this issue, the Tribunal heard through its submissions that such difficulty exists and some of the reasons for it may be linked to an MP's inability to re-enter their prior field of employment or the perception that former MPs remain political figures.

The Tribunal notes that in many workplaces, employers may offer a range of supports for employees being made redundant, such as career or financial counselling, resume building, networking support and outplacement services.

The Tribunal recommends that:

- Existing and former MPs be provided with enhanced transitional support funded by the State to assist them in finding further employment when they leave the Parliament. Such support could include career or financial counselling, resume building, networking support and outplacement services.

- Key stakeholders, including the Presiding Officers of the Parliament, the Department of Parliamentary Services and the Victorian Parliamentary Former Members Association, are consulted on the enhanced transitional support needed to ensure a fit-for-purpose program of support is developed, appropriately funded and evaluated after an appropriate interval.

# 7 Potential irregularities



The Tribunal now turns to consider potential irregularities between MP superannuation arrangements. These relate to the:

- calculation of, and indexation arrangements for, the BSP
- interaction of the rules of the superannuation schemes with Commonwealth Government superannuation caps and taxes.

## 7.1 Potential irregularities related to the BSP

The BSP was introduced by legislative changes made in 2019 as a mechanism for calculating contributions and pension entitlements for MPs in the defined benefit schemes.<sup>76</sup> The initial value of the BSP was set at \$168,901 p.a. by the Tribunal in its *Members of Parliament (Victoria) Determination 01/2019* (2019 Determination), lower than the basic salary set by that Determination (\$182,413 p.a.).<sup>77</sup>

Starting from 1 July 2020, the BSP is indexed each financial year according to a formula outlined in section 10 of the PSAS Act. It is indexed by the greater of:

- the method outlined by the Tribunal in the 2019 Determination (which was based on Average Weekly Ordinary Time Earnings (AWOTE))
- the annual increase in the All Groups Consumer Price Index (CPI) for Melbourne
- the annual increase in AWOTE for employees in Victoria.

The Department of Parliamentary Services submitted that the method for indexing the BSP is unnecessarily complicated, and creates ambiguity about which figures should be used for each index.

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<sup>76</sup> *Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019* (Vic); *Superannuation Legislation Amendment Act 2019* (Vic).

<sup>77</sup> *Victorian Independent Remuneration Tribunal, Members of Parliament (Victoria) Determination 01/2019*.



The Department suggested this ambiguity arises because:

- the ABS publishes CPI data each quarter and AWOTE data twice a year, and the PSAS Act does not specify which periods should be used for indexation purposes
- CPI and AWOTE data are ordinarily published some time following the period to which they relate (e.g. June CPI data is ordinarily published in late July).

The potential irregularities relating to the BSP were evident when the Tribunal made its 2019 Determination.

The data which should be used for each of the indexation formulae is that available as at 15 June each year, consistent with the 2019 Determination of the Tribunal. If necessary, this matter could be clarified through guidance issued to the Department of Parliamentary Services or legislation. For example, section 10 of the PSAS Act could be amended to be consistent with the indexation method provided in the 2019 Determination, by specifying that the most recent data available as at 15 June should be used. An advantage of this approach is that it avoids the need for indexation changes being applied retrospectively, as it ensures that the new value of the BSP for each financial year can be calculated before the start of that financial year. Alternatively, consideration could be given to whether regulations can be made under section 25 of the PSAS Act to clarify this matter.

The Department of Parliamentary Services also submitted that the Tribunal should recommend that a single indexation method be introduced to simplify the administration of the indexation of the BSP.

The Tribunal considers there should be no changes to indexation arrangements. The current method, which takes into account both CPI and AWOTE, ensures the pension keeps pace with broad changes in community living standards reflected by prices and wages, and reflects the Parliament's intention when introducing the BSP. It also ensures that the pension continues to be appropriately indexed in periods of abnormally low inflation or wage growth (e.g. such as the 2020-21 financial year, for which headline inflation was negative 0.3 per cent).<sup>78</sup> This is broadly consistent with the approach used for the Commonwealth Age Pension, which is indexed based on the CPI and also benchmarked against Male Total Average Weekly Earnings.<sup>79</sup>

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<sup>78</sup> ABS, *Consumer Price Index, Australia*, cat. no. 6401.0, June 2020.

<sup>79</sup> While the pension is ordinarily indexed based on CPI and the Pensioner and Beneficiary Living Cost Index, it is also benchmarked so that it cannot fall below a set percentage of Male Total Average Weekly Earnings; *Social Security Act 1991* (Cth), Part 3.16.

## 7.2 Potential irregularities related to Commonwealth legislation

The operation of Victoria's MP superannuation schemes is affected by Commonwealth legislation — in particular, the caps and taxes that apply to superannuation contributions and benefits. These caps and taxes are explained in detail in appendix C.

The interaction of these caps and taxes and the rules of the MP superannuation schemes give rise to potential irregularities for existing MPs in both the New Benefits Scheme and the accumulation scheme. These relate to:

- the impact of the concessional contributions cap on MPs in the accumulation scheme
- the effect of superannuation balance limits on MPs in the New Benefits Scheme.

### Impact of the concessional contributions cap on MPs in the accumulation scheme

MPs in the accumulation scheme are entitled to receive superannuation contributions equal to the 'prescribed percentage' (currently 15.5 per cent) of the basic salary and additional salary (if any). As at 1 July 2020, this means that an existing MP who does not hold a specified parliamentary office would receive annual contributions of \$28,274. These are treated as 'concessional' contributions for taxation purposes.

The Australian Government sets a cap on the amount of concessional contributions an individual's superannuation account(s) can receive in a given financial year. For the 2020-21 financial year, the concessional contributions cap is equal to \$25,000.<sup>80</sup>

Amounts up to the cap are ordinarily taxed at a rate of 15 per cent in the superannuation fund, although some high-income earners may have to pay additional tax, known as Division 293 tax (appendix C). Amounts over the cap are deemed to be 'excess concessional contributions' and are included in the MP's assessable income and then incur an additional tax charge.

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<sup>80</sup> From 1 July 2018, some individuals are able to carry forward unused portions of the cap for up to 5 years.

Following amendments to the PSAS Act in 2019, MPs who are members of the accumulation scheme may be required to choose between either:

- the State paying the full superannuation contribution to their nominated fund, such that the MP is liable for additional tax; or
- the State paying a reduced superannuation contribution to the MP's nominated fund (which is at a level that avoids additional tax being payable) and the MP forfeiting their entitlement to that contribution.

In contrast, Victorian public sector executives and similarly paid individuals in the private sector ordinarily have greater control over how their total remuneration package is structured. For example, they may request that superannuation contributions that would exceed the concessional contributions cap are instead paid as salary.

The Tribunal identified the following options for addressing this issue:

- allowing MPs to nominate that any entitlements in excess of the concessional contributions cap are instead placed into their nominated superannuation account as non-concessional contributions; or
- allowing MPs to nominate that any entitlements in excess of the concessional contributions cap are instead paid to them as salary.

However, the Tribunal did not receive any submissions suggesting changes to address this issue. If it is considered that this potential irregularity should be addressed, further analysis may be required on the appropriate legislative mechanism and tax implications for individual MPs of making the preferred change. As the second option may lead to some MPs choosing to reduce their superannuation entitlements, further consideration and analysis should be undertaken as to the effect that would have on MP retirement outcomes.

### **Impact of total superannuation balance limit on MPs in the defined benefit scheme**

Existing MPs in the defined benefit schemes are required to make non-concessional (i.e. after-tax) contributions to the Parliamentary Contributory Superannuation Fund (PCSF).<sup>81</sup> MPs do not have the option of reducing their contribution rate or making contributions on a concessional (i.e. before-tax) basis.

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<sup>81</sup> MPs who have served more than 20.5 years are only required to make contributions if they receive an additional salary.



The Commonwealth places a limit on the non-concessional contributions an individual can make each financial year. The non-concessional contributions cap (NCCC) is \$100,000 for the 2020-21 financial year.

Ordinarily, the non-concessional contributions that existing MPs in the New Benefits Scheme are required to make will not exceed the NCCC. However, if an MP's total superannuation balance exceeds a certain threshold (\$1.6 million for the 2020-21 financial year) their non-concessional contributions cap is reduced to \$0 and they have to pay additional tax equal to 47 per cent of the full value of their contributions.

While MPs in the defined benefit schemes accrue superannuation in a different way to accumulation members, special rules are used to determine their total superannuation balance while they serve in the Parliament. This means they may be deemed to have an equivalent superannuation balance of more than \$1.6 million based on their particular circumstances.

This presents as a potential irregularity affecting MPs in the New Benefits Scheme, as MPs and other Australians in accumulation schemes are ordinarily not forced to make non-concessional contributions, and/or can opt to have excess contributions withdrawn from their fund if they do make them.

The Tribunal identified the following options for addressing this issue:

- allow affected MPs in the New Benefits Scheme to forgo making contributions and deduct a corresponding amount from their superannuation (plus interest) when they leave the Parliament, thereby preserving the overall relationship between contributions and superannuation benefits
- allow existing MPs in the New Benefits Scheme to cease making contributions, in return for them ceasing to accrue further superannuation benefits.

The Tribunal notes that while this potential irregularity was outlined in the May 2020 Issues Paper for this review, there were no submissions to the Tribunal requesting that it be addressed or advising that existing MPs are being affected by it.

The Tribunal has chosen to not recommend changes to address this potential irregularity, as:

- the Tribunal is not satisfied the potential irregularity is having a sufficient impact on existing MPs to warrant legislative change, particularly as it will not

affect any MPs once the 17 remaining existing MPs in the New Benefits Scheme leave the Parliament

- some other employees in defined benefit schemes who are paid at comparable levels may face similar issues
- due to the Commonwealth's frequent changes to superannuation legislation, any legislative change made to address this irregularity may not be a lasting solution.

## 7.3 Conclusion and recommendations

The Tribunal has identified several potential irregularities related to the BSP and the way the rules of the MP superannuation schemes interact with Commonwealth Government taxes.

The Tribunal does not consider any changes need to be made to the legislation governing the calculation or indexation of the BSP, although the proper approach for applying indexation to the BSP may require clarification.

The Tribunal also considered potential irregularities related to the interaction of Commonwealth taxation legislation with the MP superannuation schemes. However, given that the Tribunal did not receive any submissions about these potential irregularities and there is uncertainty about the effect of options to deal with them, the Tribunal has recommended no changes are to be made to the superannuation schemes to address these.

Accordingly, in relation to these potential irregularities, **the Tribunal recommends that there be no changes to the superannuation arrangements for Victorian MPs at this time.**

# Appendix A – Historical context



Superannuation coverage for Members of the Parliament of Victoria (MPs) was first introduced in 1946. Since that time, the superannuation arrangements of Victorian MPs have been reformed on multiple occasions, most recently in 2019.

This appendix outlines the history of MP superannuation in Victoria. Where applicable, changes to the arrangements are contextualised within broader changes to superannuation arrangements in the Australian economy (e.g. the introduction of the Superannuation Guarantee (SG)).

## A1. Early schemes

In 1941, Western Australia became the first Australian jurisdiction to legislate for the provision of retirement income for its MPs, passing the *Members of Parliament Fund Act 1941* (WA). Other jurisdictions soon followed suit, with Victoria and New South Wales legislating for MP superannuation in 1946, while South Australia, Queensland and the Commonwealth all did likewise in 1948.<sup>82</sup>

Speaking shortly before the passage of the *Parliamentary Contributory Retirement Fund Act 1946* (Vic), the then Minister of Labour explained why retirement income for Victorian MPs was needed:<sup>83</sup>

*Provision should be made for the member who spends the better part of his life as a representative of the people and, by losing his seat, is unable to re-establish himself in another avocation.*

The provision of superannuation for MPs was also justified on the grounds that it was not possible for an MP to save for retirement given current remuneration levels.<sup>84</sup> Indeed, one MP described the allowance paid to MPs at that time as

<sup>82</sup> Commonwealth, *Parliamentary Debates*, 'House of Representatives', 1 December 1948, 3738 (Ben Chifley, Prime Minister and Treasurer).

<sup>83</sup> Victoria, *Parliamentary Debates*, 'Legislative Council', 18 December 1946, 4321 (Percy James Clarey, Minister of Labour).

<sup>84</sup> Victoria, *Parliamentary Debates*, 'Legislative Assembly', 11 December 1946, 4054 (John Cain, Premier and Treasurer).

“meagre” in comparison to their duties and responsibilities, while another noted that some MPs were the lowest paid members of their community.<sup>85</sup>

That Act provided for compulsory deductions of £1 from the fortnightly pay of each MP, to be deposited in the Parliamentary Contributory Retirement Fund. The State of Victoria also contributed funds from the consolidated revenue as necessary to ensure that the fund had sufficient resources to meet its obligations to MPs. In return, a pension was provided to former MPs who had served either:

- for an aggregate of 15 years or more; or
- in at least three consecutive parliaments, and who ceased to be a member due to defeat at an election, resignation, or not seeking re-election (for reasons which satisfied the fund’s trustees).

At that time, the MP pension was equivalent to the ‘basic wage’ for Melbourne as determined by the Commonwealth Court of Conciliation and Arbitration (together with any additional amounts or ‘loadings’).<sup>86</sup> The legislation also provided for a ‘retiring allowance’ for MPs who were not eligible to receive the pension, as well as reduced pensions for the spouses of deceased MPs.

## Early reforms

Due to the effects of inflation and changes to MP salaries, the *Parliamentary Contributory Retirement Fund Act 1946* (Vic) was amended on multiple occasions (in 1948, 1951, 1952 and 1954), primarily to increase MP contributions and benefits. However, by the early 1960s, there were calls to make more substantial changes to the arrangements. Common complaints included that the arrangements were inequitable and that the Victorian scheme “suffered...by comparison” with those then operating in the Commonwealth and other states.<sup>87</sup>

In response to these and other concerns, the Victorian Parliament passed the *Parliamentary Contributory Superannuation Act 1962* (Vic). The new Act raised the individual contribution to £10 and increased the rate of pension for eligible MPs to 1½ times the basic wage. It also established a new fund, the Parliamentary

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<sup>85</sup> Victoria, *Parliamentary Debates*, ‘Legislative Assembly’, 18 December 1946, 4248 (John McDonald, Member for Shepparton); Victoria, *Parliamentary Debates*, ‘Legislative Assembly’, 18 December 1946, 4323 (William James Beckett, Member for Melbourne Province).

<sup>86</sup> The basic wage was updated quarterly according to the ‘Court Series’ retail price index published by the Court. It was initially conceived as the amount necessary for an employee and their family to maintain a life of “reasonable...comfort”, although it eventually came to be seen as the highest amount that industries could afford to pay their employees. Australian Bureau of Statistics, *Official Yearbook of the Commonwealth of Australia No. 43 – 1957* (Commonwealth of Australia: Canberra, 1957), 166.

<sup>87</sup> Victoria, *Parliamentary Debates*, ‘Legislative Council’, 11 December 1962, 2379 (Lindsay Thompson, Minister of Housing).

Superannuation Fund, and provided for an increased pension for MPs who had served as Premier. However, due to the slow increase in pension benefits (relative to earnings growth in the broader community) and other perceived shortcomings, MP superannuation arrangements were reformed again in the late 1960s.

## A2. Existing Benefits Scheme

Significant changes to MP superannuation arrangements were made in 1968 with the passage of the *Parliamentary Salaries and Superannuation Act 1968* (Vic) (PSS Act).

The PSS Act established the Parliamentary Contributory Superannuation Fund (PCSF), which took over the assets and liabilities of the Parliamentary Contributory Retirement Fund and Parliamentary Superannuation Fund. Members of the previous scheme could elect to transfer into the new scheme within 3 months.

According to the then Premier, Sir Henry Bolte, the superannuation scheme introduced by the PSS Act was devised with the “peculiarities and special features of parliamentary service” in mind, and sought to provide “adequate remuneration” for MPs. It was partly based on the scheme then available to employees in the Victorian Public Service, which Bolte described as being the “best in Australia”.<sup>88</sup> This scheme is now known as the Existing Benefits Scheme.

The PSS Act required male MPs to contribute 11.5 per cent of their salary to the PCSF. Female MPs were initially only required to contribute 10 per cent of their salary, until contribution rates were made equal in 1975.<sup>89</sup>

The PSS Act also introduced a new formula for determining the rate of pension for eligible MPs, based on the salary paid to MPs. While previously only the Premier received an increased pension, the change to the way pensions were calculated ensured that MPs who held other parliamentary offices (e.g. Speaker or Leader of the Opposition) would also receive one.

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<sup>88</sup> Victoria, *Parliamentary Debates*, ‘Legislative Assembly’, 19 November 1968, 1815 (Henry Bolte, Premier and Treasurer).

<sup>89</sup> At both contribution rates, eligible female MPs were entitled to the same rate of pension as a male MP with the same salary history and an equivalent period of parliamentary service. *Parliamentary Salaries and Superannuation (Amendment) Act 1975* (Vic), s9(b).

The PSS Act also introduced a number of other changes, including:

- provision of pensions for MPs who retired due to ill health
- provision of pensions for widows of deceased MPs (even if the latter was ineligible at their time of death)
- the right of an MP to convert part of their pension into a lump sum payment.

## A3. 1990s reforms

Prior to the 1990s, Australia did not have a mandatory national superannuation system in place, although several attempts had been made to introduce one.<sup>90</sup> Superannuation was instead a matter for individual employers. Some employers, including the Commonwealth, state and territory governments and some large corporations, operated schemes which provided eligible employees with either a lump sum or (less commonly) a pension upon retirement. Coverage was not wide, and a national survey conducted by the Australian Bureau of Statistics in 1974 found that only 28 per cent of Australians aged 15 and above had ever had superannuation coverage.<sup>91</sup>

In the 1970s and 1980s, superannuation for employees became more common as it started to be included in industrial awards. A 3 per cent employer superannuation contribution was included in the 1986 National Wage Case, following which it became commonplace for employees to have a superannuation account.

### Introduction of the Superannuation Guarantee

The Australian Government established the SG in 1992, with employers required to make superannuation contributions on behalf of their employees.<sup>92</sup> The following year, Victoria closed its public sector defined benefit schemes to new members, other than operational employees in specified emergency service entities. From this point, most new public sector employees were required to join an accumulation scheme and receive contributions based on the SG percentage.

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<sup>90</sup> Parliament of Australia, *Safeguarding Super: The Regulation of Superannuation*, First Report of the Senate Select Committee on Superannuation (Commonwealth of Australia: Canberra, 1992), 9.

<sup>91</sup> Australian Bureau of Statistics, *Official Yearbook of the Commonwealth of Australia No. 60 – 1974* (Commonwealth of Australia: Canberra, 1975), 719.

<sup>92</sup> *Superannuation Guarantee (Administration) Act 1992* (Cth).

This change was made because of the significant and growing financial burden placed on the State by the schemes. It was said at the time that:<sup>93</sup>

*one of the most serious problems facing ... government was the huge and growing gap between the liabilities of the State's public sector superannuation schemes and the assets available in the superannuation funds to meet those liabilities.*

Concerns over the cost of financing Victoria's public sector superannuation schemes had arisen as early as the mid-1980s. Around that time, the Economic and Budget Review Committee argued that future Victorian governments would need to either raise taxes or reduce expenditure in order to meet the predicted escalation in liabilities. The Committee thus concluded that the Government had "little option" but to redesign the superannuation arrangements.<sup>94</sup>

Although the defined benefit scheme for MPs remained open, changes were also made in 1993 to how pension entitlements were calculated going forward.<sup>95</sup> The changes were implemented to decrease the total value of benefits under the scheme and to achieve further cost savings.

## **New Benefits Scheme**

In 1996, the State of Victoria introduced a new defined benefit scheme for MPs, called the New Benefits Scheme.<sup>96</sup> The New Benefits Scheme was largely based on the Commonwealth MP superannuation scheme operating at that time.

While the rules for contributions remained the same, the New Benefits Scheme had slightly different eligibility requirements for the pension (based on whether an MP's retirement from the Parliament was deemed to be 'involuntary' or 'voluntary') and had a simplified formula for determining the value of the pension (based on number of years served as an MP and an office holder). It also had different rules about reversionary benefits provided to a former MP's partner or eligible children.

At the same time, the Existing Benefits Scheme was closed to new members, and serving MPs that were in the Existing Benefits Scheme could elect to transfer into the New Benefits Scheme.

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<sup>93</sup> Victoria, *Parliamentary Debates*, 'Legislative Council', 24 November 1993, 1233-1235 (Roger M. Hallam, Minister for Regional Development).

<sup>94</sup> Parliament of Victoria, *Minutes of the Proceedings of the Legislative Council of Victoria – Volume 3, Session 1982-85* (Parliament of Victoria Library: Melbourne, 1985), 6.

<sup>95</sup> *Public Sector Superannuation (Administration) Act 1993* (Vic), Part 8.

<sup>96</sup> *Miscellaneous Acts (Omnibus Amendments) Act 1996* (Vic), s28.

## A4. Accumulation scheme

In June 2004, the Commonwealth Government closed its MP defined benefit scheme to new entrants and introduced an accumulation scheme for all future MPs. This followed a pledge by the then federal Leader of the Opposition, Mark Latham, that a future Labor Government would legislate to close the defined benefit scheme if elected.<sup>97</sup> When announcing the closure of the defined benefit scheme, then Prime Minister John Howard said:<sup>98</sup>

*I would hope that after this announcement ... all of your cohorts in state capitals will be on the trail of every state Labor Premier to make sure they do exactly the same thing and that you will give them no peace until they do.*

In November 2004, the Victorian Parliament legislated to close the New Benefits Scheme and introduced an accumulation scheme, whereby the State made superannuation contributions based on the SG percentage to the MP's nominated superannuation fund. The then Minister for Finance stated that the intention of the reforms was to bring MP superannuation arrangements "into line with those available to the broader community".<sup>99</sup>

### Amendments following the Hazell Review

In 2012, the Victorian Government commissioned Malcolm Hazell CVO AM to conduct a review into the salary entitlements, allowances and other arrangements for Victorian MPs (Hazell Review).<sup>100</sup>

The Hazell Review made three recommendations to the Government to address the discrepancy between the superannuation schemes, each of which has been implemented:

- increasing the employer superannuation contributions for MPs in the accumulation scheme from 9 per cent to 15 per cent (implemented in 2013)<sup>101</sup>

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<sup>97</sup> Parliament of Australia, 'Parliamentary Superannuation Bill 2004, Bills Digest No. 131 2003-04', (Parliamentary Library: Canberra, 2004).

<sup>98</sup> John Howard MP, Prime Minister of Australia, Press Conference Transcript, Parliament House, Canberra, 12 February 2004.

<sup>99</sup> Victoria, *Parliamentary Debates*, 'Legislative Council', 3 November 2004, 1007 (John Lenders, Minister for Finance).

<sup>100</sup> Malcolm Hazell, *Independent Review of Victorian MPs' Salary Entitlements, Allowances and Other Arrangements*, report prepared for the Department of Premier and Cabinet, Victoria, 2013.

<sup>101</sup> In 2013, the PSS Act was amended to provide for an additional 6 per cent on top of the SG percentage. This means that, for the 2020-21 financial year, MPs in the accumulation scheme will receive contributions equal to 15.5 per cent of basic and additional salary.



- introducing a resettlement allowance for MPs who are not members of the defined benefit schemes and who lose their seat in the Parliament (introduced in 2013, and replaced by the separation payment in 2019)
- revising the MP basic salary based on an objective and comprehensive work-value assessment (completed by the Victorian Independent Remuneration Tribunal (Tribunal) in 2019).

The increase in contributions was justified on the basis that MPs do not accrue recreation or long-service leave. In his report, Hazell noted that:<sup>102</sup>

*For a ‘two-term post-2004 MP’, this increase ... would provide a benefit roughly equivalent to the long-service and annual leave entitlements that other public officials may expect to accrue over the same period.*

## A5. Recent reforms

In March 2019, the Victorian Parliament passed the *Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019* (Vic) (VIRTIPS Act) which, among other matters:

- established the Tribunal
- replaced the resettlement allowance with the separation payment
- renamed the PSS Act as the *Parliamentary Salaries, Allowances and Superannuation Act 1968* (Vic) (PSAS Act).

Legislative reforms carried out in 2019 also severed the link between the basic and additional salaries payable to existing MPs, and the contributions and pension entitlements for former and existing MPs in the defined benefit schemes. Going forward, these contributions and pensions entitlements are calculated with reference to a new value, known as the basic salary portion (BSP). The purpose of these changes was to preserve the previous superannuation arrangements for members of the defined benefit schemes, while ensuring that there would be no “unintended windfall gains” (e.g. due to increases to additional salaries).<sup>103</sup>

The Tribunal made the *Members of Parliament (Victoria) Determination 01/2019* (2019 Determination) in September 2019. That Determination indirectly affected

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<sup>102</sup> Malcolm Hazell, *Independent Review of Victorian MPs’ Salary Entitlements, Allowance and Other Arrangements*, 32.

<sup>103</sup> Victoria, *Parliamentary Debates*, ‘Legislative Council’, 15 October 2019, 3285 (Mark Gepp, Member for Northern Victoria).

superannuation contributions and entitlements for MPs by changing the basic salary for MPs and the additional salaries provided to specified parliamentary office holders. It also set the initial value of the BSP as \$168,901 per annum (p.a.), which was \$13,512 lower than the MP basic salary (\$182,413 p.a.). The value of the BSP set by the Tribunal reflected the increase in the MP basic salary also set in that Determination, but excluding a component related to the roll-in of the expense allowance previously provided to all MPs.<sup>104</sup>

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<sup>104</sup> Victorian Independent Remuneration Tribunal, *Members of Parliament (Victoria) Determination 01/2019*, 138.

# Appendix B – Summary of MP defined benefit schemes



This appendix sets out arrangements for the Existing Benefits Scheme and New Benefits Scheme. Generally speaking:

- the Existing Benefits Scheme covers former MPs elected before 2 July 1996 and who did not elect to join the New Benefits Scheme
- the New Benefits Scheme covers existing and former MPs elected between 2 July 1996 and 9 November 2004.

## B1. MP contributions

MPs in the defined benefit schemes are required to make after-tax contributions to the PCSF.<sup>105</sup> All MPs are required to contribute an amount equal to 11.5 per cent of the BSP for their first 20.5 years of service. The BSP was set at \$168,901 p.a. by the Tribunal in the 2019 Determination.

Specified parliamentary office holders that receive an additional salary for their position are required to make additional contributions to the PCSF. Their additional contributions are based on the Additional Salary Percentage (ASP) specified in the PSAS Act in respect of that office. The ASP for each office corresponds to the additional salary paid for that office prior to September 2019.<sup>106</sup>

Equations B1 and B2 set out the required contribution rates.

**Equation B1: MP contributions under a defined benefit scheme – first 20.5 years**

$$\text{contributions} = (0.115 \times \text{BSP}) + (0.115 \times \text{BSP} \times \text{ASP})$$

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<sup>105</sup> PSAS Act, s14.

<sup>106</sup> Except for the Parliamentary Secretary to the Premier and the Deputy Government Whip in the Assembly.

Equation B2: MP contributions under a defined benefit scheme – after 20.5 years

$$\text{contributions} = 0.115 \times \text{BSP} \times \text{ASP}$$

## B2. Pension eligibility

The defined benefit schemes have different pension eligibility requirements.

### Existing Benefits Scheme

A pension is payable to former MPs under the Existing Benefits Scheme if their aggregate period of service satisfies any of the following:<sup>107</sup>

- at least 15 years
- at least 12 years and they cease to be an MP due to resignation or retirement which does not require or cause the holding of a by-election (other than on the day of a general election)
- at least 8 years, and:
  - they cease to be an MP as a result of a defeat at an election, or
  - they cease to be an MP due to resignation or not seeking re-election for good and sufficient reasons which satisfy Emergency Services and State Super (ESSSuper) (the administrator of the PCSF)
- at least 6 years, they served in at least three Parliaments, are over the age of 60 and cease to be an MP as a result of not seeking re-election at a general election.

### New Benefits Scheme

Under the New Benefits Scheme, a former MP's eligibility for the pension depends on whether their retirement from the Parliament was considered to be 'voluntary' or 'involuntary.'<sup>108</sup>

A former MP is considered to have involuntarily retired if they were:

- at least 60 years at the time that they ceased to be an MP, or
- defeated at an election.

A former MP's retirement is considered voluntary if they were:

- less than 60 years at the time they left the Parliament, or

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<sup>107</sup> PSAS Act, s15(1A).

<sup>108</sup> ESSSuper Board, *Parliamentary Contributory Superannuation Fund Member Handbook - New Benefits Scheme (Division 3)* (ESSSuper Board: Melbourne, 2017), 7.

- it occurred in circumstances which, in the opinion of ESSSuper (the administrator of the PCSF), should be treated as such.

If a former MP's retirement is considered involuntary, they are eligible for the pension if they:<sup>109</sup>

- were an MP for at least 8 years, or
- have on at least three occasions ceased to be a Member of the Parliament on the dissolution or expiration of the Legislative Assembly, or due to expiration of their term of office.

If a former MP's retirement is considered voluntary, they are eligible for the pension if they:

- were an MP for at least 12 years, or
- have on at least four occasions ceased to be a Member of the Parliament on the dissolution or expiration of the Legislative Assembly, or due to expiration of their term of office.

## B3. Value of the pension

Different formulae are used to calculate the value of the pension in each scheme.

### Existing Benefits Scheme

The value of the pension provided to former MPs in the Existing Benefits Scheme is determined using the formula in equation B3.

#### Equation B3: Value of MP pension under the Existing Benefits Scheme

$$\text{pension} = A \times R \times \text{BSP}$$

The variable A takes into account the former MP's length of service in the Parliament. Generally speaking, the longer a former MP served the higher the pension they will receive. The highest pension is paid to former MPs who served an aggregate of at least 20.5 years. The value of A ranges from 0.36 to 0.75.

The variable R takes into account the years in which a former MP may have been an office holder and received an additional salary. Generally speaking, the more additional salary a former MP received the higher their pension. The specific

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<sup>109</sup> ESSSuper Board, *PCSF Member Handbook*, 12.

formulae used to calculate the variables of A and R are set out in section 15 of the PSAS Act.

## New Benefits Scheme

The value of the pension provided to former MPs in the New Benefits Scheme is calculated as a percentage of the current BSP. The minimum amount that can be paid is 50 per cent of the BSP (as at 30 June 2019, \$84,450.50 p.a.). For every year of service over 8 years, the former MP receives an additional 2.5 per cent, up to a maximum of 75 per cent for 18 or more years of service. A pro rata amount is paid for partial years of service.<sup>110</sup>

Former MPs who were an office holder also receive an additional pension, based on the years that they held that office and the applicable ASP (equation B4). For former MPs who held more than one office, the additional pensions are combined. However, the total additional pension a former MP can receive cannot exceed 75 per cent of the BSP multiplied by the highest ASP that applies to the offices they held.

### Equation B4: Value of additional pension under the New Benefits Scheme

$$\text{pension} = \text{BSP} \times \text{ASP} \times 0.0625 \times \text{years office held}$$

## B4. Payments for MPs who are not eligible for the pension

Under both defined benefit schemes, lump sum payments are made to:

- former MPs who cease to be a member as the result of defeat at an election, or as the result of resignation or not seeking re-election, and who are not eligible for the pension
- the personal representative of an MP who dies while serving if they are not survived by a partner or eligible children.<sup>111</sup>

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<sup>110</sup> ESSSuper Board, *PCSF Member Handbook*, 12.

<sup>111</sup> PSAS Act, s15; ESSSuper Board, *PCSF Member Handbook*, 11, 16.

## Existing Benefits Scheme

The lump sum payment is equal to the sum of:

- the contributions made from the MP's salary
- $2 \frac{1}{3}$  times the contributions made before 1 December 1993 and  $1 \frac{2}{3}$  times the contributions made after that date (Additional Amount).

However, if a lump sum payment is being made to a former MP who did not cease to be a member of the Parliament—

- as the result of defeat at an election, or
- as the result of resignation or not seeking re-election, for good and sufficient reasons which satisfy the trustees—

then they only receive their contributions back plus half of the Additional Amount.

Special rules apply for former MPs who receive a lump sum payment and subsequently become eligible for a pension (i.e. as a result of returning to the Parliament).<sup>112</sup>

## New Benefits Scheme

If a former MP retired involuntarily, the lump sum payment is equal to the deductions made from the MP's salary multiplied by  $3 \frac{1}{3}$ .<sup>113</sup>

If a former MP retired voluntarily, their lump sum payment is instead equal to the sum of:

- the deductions made from their salary
- $1 \frac{1}{6}$  times the deductions made during the last 8 years of service.<sup>114</sup>

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<sup>112</sup> PSAS, s20.

<sup>113</sup> ESSSuper Board, *PCSF Member Handbook*, 11.

<sup>114</sup> ESSSuper Board, *PCSF Member Handbook*, 11.

## **B5. Converting all or part of a pension into a lump sum**

### **Existing Benefits Scheme**

Former MPs in the Existing Benefits Scheme who are entitled to the pension may, within 3 months of ceasing to be a member of the Parliament, elect to convert all or part of their pension into a lump sum payment.<sup>115</sup>

The former MP's ongoing pension is then reduced by the percentage of the pension that they converted into a lump sum. For former MPs who were younger than 66 years when they left the Parliament, the maximum lump sum is equal to the annual pension entitlement multiplied by 10. The lump sum payment is reduced for former MPs who reached 66 years of age while serving as an MP, unless they left the Parliament at or before the next general election held after they reached 66 years of age and their leaving did not require the holding of a by-election.

Special rules apply for former MPs who choose to convert part of their pension into a lump sum payment, and subsequently return to the Parliament.<sup>116</sup>

### **New Benefits Scheme**

Former MPs in the New Benefits Scheme who are entitled to the pension may, within 3 months of ceasing to be a member of the Parliament, elect to convert all or part of their pension into a lump sum payment. The rules on how the pension benefit can be commuted into a lump sum are the same as for the Existing Benefits Scheme.<sup>117</sup>

Under the rules for the New Benefits Scheme, ESSSuper may defer a former MP's decision to convert part of their pension into a lump sum for up to 12 months, if it is of the opinion that the person is likely to become an MP again within 12 months of becoming eligible for the pension.

Special rules apply for former MPs who choose to convert part of their pension into a lump sum payment, and subsequently return to the Parliament.

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<sup>115</sup> PSAS Act, s16(1).

<sup>116</sup> PSAS Act, s20.

<sup>117</sup> ESSSuper Board, *PCSF Member Handbook*, 13-14.



## **B6. Restrictions on lump sum payments due to preservation**

Under both schemes, former MPs may receive a lump sum payment, either because they are ineligible to receive the pension or because they choose to convert part or all of their pension into a lump sum. However, the lump sum amount that former MPs can receive is restricted by Commonwealth 'preservation' rules.<sup>118</sup> These rules restrict how much of a lump sum retirement benefit can be provided to a person before they retire and reach their 'preservation age' (which ranges from 55 to 60 years depending on when the person was born). These restrictions cease to apply once the person reaches 65 years or in other specific circumstances (e.g. death or permanent disablement).

## **B7. Special rules for ceasing to be an MP due to ill-health**

Both schemes feature special rules regarding pensions provided to former MPs who ceased to be an MP because their ill-health rendered them incapable of serving. Subject to certain requirements, these former MPs can receive the pension regardless of time served.<sup>119</sup> However, they are not able to commute their pension into a lump sum.

## **B8. Partner pensions**

Following the death of an MP or former MP, their partner is entitled to a pension. If an MP dies while in office, their partner receives a pension regardless of how long the MP had served. The method for calculating partner pensions differs between the two schemes.<sup>120</sup>

### **Existing Benefits Scheme**

Under the Existing Benefits Scheme, if a former MP who was receiving the pension dies, their partner receives  $\frac{2}{3}$  of the pension, or the 'minimum pension', whichever is greater at the time of the former MP's death.

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<sup>118</sup> *Superannuation Industry (Supervision) Regulations 1994* (Cth), reg 6.01(7), Division 6.3 and Schedule 1.

<sup>119</sup> PSAS Act, s17; ESSSuper Board, *PCSF Member Handbook*, 16-17.

<sup>120</sup> PSAS Act, s18; ESSSuper Board, *PCSF Member Handbook*, 15.

If an MP dies while in office and had served an aggregate of at least 8 years, their partner receives either  $\frac{2}{3}$  of the pension that the MP would have received as a former MP (assuming they were eligible) or the ‘minimum pension’, whichever was greater at the time of the MP’s death.

If an MP dies while in office and had not served an aggregate of at least 8 years, their partner receives the ‘minimum pension’.

The ‘minimum pension’ is calculated using a complex formula set out in section 18 of the PSAS Act. Generally speaking, it can range between 30 and 40 per cent of the current BSP.

## New Benefits Scheme

Under the New Benefits Scheme, the partner’s pension is equal to  $\frac{5}{6}$  of the former MP’s pension. In the case of an MP who dies while in office who has not served at least 8 years at the time of death, their partner’s pension is calculated as if the MP had served at least 8 years.

## B9. Pensions to children

Pensions can also be paid in respect of a former MP’s eligible children. Children can receive the pension if they are under 18 years, or if they are under 25 years and in the opinion of ESSSuper they are a full-time student. Pensions are also provided for children regardless of age who have a significant, permanent (or likely permanent) disability that requires ongoing support services.<sup>121</sup>

Broadly speaking, a pension is payable where—

- a former MP receiving the pension, or an existing MP, dies without a partner, or
- both the former MP and their partner have died—

and they leave behind an eligible child.

Under the Existing Benefits Scheme, ESSSuper can pay a pension in respect of each eligible child, although the total value of the pensions cannot exceed the value of the pension that would have been payable to a partner of the former MP.<sup>122</sup>

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<sup>121</sup> PSAS Act, ss10A, 10B; ESSSuper Board, *PCSF Member Handbook*, 15.

<sup>122</sup> PSAS Act, s18(6).

Under the New Benefits Scheme, the pension that each eligible child receives is equal to  $\frac{1}{4}$  of the pension of the former MP's partner (or the pension the partner would have received if the former MP had one). If there are more than four children, each receives a pension equal to the pension of the former MP's partner divided by the number of children.<sup>123</sup>

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<sup>123</sup> ESSSuper Board, *PCSF Member Handbook*, 15.

# Appendix C – Commonwealth taxes on MP superannuation



The Commonwealth Government has sought to ensure that members of accumulation and defined benefit schemes receive “broadly commensurate taxation treatment”.<sup>124</sup> However, in some cases Commonwealth legislation results in the different treatment of MPs depending on whether they participate in a defined benefit scheme (Part 3 of the PSAS Act) or an accumulation scheme (Part 4 of the PSAS Act). For example, differences arise due to:

- grandfathering arrangements which apply to existing MPs in the defined benefit schemes
- the effect of the non-concessional contributions cap on existing MPs
- the taxation rules for pensions or income streams received under defined benefit or accumulation schemes.

This appendix focuses on the three stages at which superannuation is taxed during an MP’s lifetime — when:

- money is contributed to the MP’s fund
- the superannuation fund generates investment earnings
- the MP withdraws money from their superannuation account or receives retirement benefits (e.g. a pension).

These taxes have been taken into account in the Tribunal’s modelling of quantitative differences between the schemes.

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<sup>124</sup> Explanatory Memoranda, Superannuation (Objective) Bill 2016 (Cth), Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016 (Cth), Superannuation (Excess Transfer Balance Tax) Imposition Bill 2016 (Cth), 23.

## C1. Taxes on contributions

Superannuation contributions are taxed differently depending on whether they are classed as ‘concessional’ or ‘non-concessional’.

Concessional contributions are ordinarily taxed at a rate of 15 per cent when they are paid into a complying superannuation fund. Examples of concessional contributions in the context of the MP superannuation schemes are, for MPs:

- in the accumulation scheme — contributions made by the State of Victoria to the MP’s nominated fund (including any additional contributions made under a salary sacrifice arrangement)
- in the defined benefit schemes — ‘notional taxed contributions’ (NTCs) that are calculated on their behalf.

Non-concessional contributions are not subject to taxation up to a certain threshold as they are made from after-tax income. Examples of non-concessional contributions in the context of the MP superannuation schemes are, for MPs:

- in the accumulation scheme — additional voluntary contributions made by MPs to their superannuation fund from their after-tax income
- in the defined benefit schemes — contributions that MPs are required to make to the PCSF.

There are caps on the amounts of concessional and non-concessional contributions an individual can make each financial year without incurring additional tax.

### Concessional contributions cap

In the 2020-21 financial year, the concessional contributions cap is \$25,000.<sup>125</sup> If an individual’s concessional contributions for a financial year exceed the cap, the excess contributions are included in their taxable income. However, a 15 per cent tax offset is provided to recognise the tax on concessional contributions that will already have been paid by the superannuation fund.<sup>126</sup> Individuals who exceed the cap also incur an excess concessional contributions charge, to acknowledge that

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<sup>125</sup> From 1 July 2018, individuals with a total superannuation balance less than \$500,000 on 30 June of the previous financial year are able to ‘carry forward’ unused portions of the cap for up to 5 years. As a result, these individuals may have an increased cap for some financial years. *Income Tax Assessment Act 1997* (Cth), s291-20.

<sup>126</sup> *Income Tax Assessment Act 1997* (Cth), s291-15.

the additional tax they pay as a result of exceeding the cap is collected later than normal income tax.<sup>127</sup>

If an existing MP in the accumulation scheme has excess concessional contributions for a financial year, they will receive an excess concessional contributions determination from the Australian Taxation Office (ATO) after that financial year has concluded. Upon receiving the determination, the MP may choose to:

- do nothing (i.e. leave the excess amount in their superannuation fund); or
- elect to withdraw up to 85 per cent of the excess contributions (which may be used to pay the tax liability).

Alternatively, they may request in writing that the State limit their contributions to avoid exceeding the cap.<sup>128</sup> Existing MPs in the defined benefit schemes do not have these options under the current rules of the schemes.<sup>129</sup>

Any excess concessional contributions that are not withdrawn are treated as non-concessional contributions for the purposes of the non-concessional contributions cap.<sup>130</sup>

### **NTCs and grandfathering arrangements for members of the defined benefit schemes**

Existing and former MPs in the defined benefit schemes are members of the PCSF.

The State of Victoria has been required to contribute additional funds to the PCSF from time to time to ensure that sufficient funds are available for benefits to be paid.<sup>131</sup> But unlike the accumulation scheme, these contributions are generally not linked to individual members (i.e. the State does not contribute a predetermined amount on behalf of each MP in the PCSF).

In light of this, ESSSuper (which administers the PCSF) is required to calculate the NTCs for existing MPs. NTCs represent the notional superannuation contributions made by the State of Victoria on behalf of these MPs. As such, they are analogous to the contributions received by MPs in the accumulation scheme and are treated as concessional contributions for taxation purposes.<sup>132</sup>

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<sup>127</sup> *Taxation Administration Act 1953* (Cth), Schedule 1, s95-5.

<sup>128</sup> PSAS Act, s31(4).

<sup>129</sup> *Taxation Administration Act 1953* (Cth), Schedule 1, Division 131.

<sup>130</sup> *Income Tax Assessment Act 1997* (Cth), ss292-90(1) and (1A).

<sup>131</sup> Information provided by the Department of Treasury and Finance.

<sup>132</sup> ESSSuper Board, *PCSF Member Handbook*, 9.

NTCs are calculated using a formula set out in the *Income Tax Assessment Regulations 1997* (Cth) (equation C1). The formula depends on a value known as the ‘new entrant rate’ (NER), which represents the long-term cost (as a percentage of superannuation salary)<sup>133</sup> of providing the benefit payable to a hypothetical new entrant on voluntary exit. The NER was calculated in 2007 and was based on legislated assumptions, including assumed investment returns and salary/pension rates.

### Equation C1: formula for calculating NTCs for accruing members of defined benefit schemes

$$\text{NTCs} = 1.2 \times [(\text{NER} \times \text{superannuation salary}) - \text{member contributions}]$$

For existing MPs in the defined benefit schemes who held a specified parliamentary office at the start of the financial year, NTCs are calculated separately to reflect the notional superannuation contributions they receive due to:<sup>134</sup>

- serving as an MP (applicable NER is 35 per cent)
- holding the specified parliamentary office (applicable NER is 46 per cent).

‘Non-accruing’ members of the PCSF (e.g. MPs who have either left the Parliament or accrued their maximum entitlement) have NTCs equal to zero.

Grandfathering arrangements are in place under Commonwealth law which ensure that, where members of defined benefit schemes have NTCs that exceed the concessional contributions cap, their NTCs are instead deemed to be equal to the cap (i.e. are capped at \$25,000 for the 2020-21 financial year). These arrangements typically only apply where a defined benefit account was opened prior to 12 May 2009.<sup>135</sup> Defined benefit accounts which are opened after this date are not eligible for grandfathering, which means that individuals whose NTCs exceed the cap are required to pay the resultant tax liability out of their own funds.

## Non-concessional contributions cap

The non-concessional contributions cap is equal to the concessional contributions cap multiplied by 4 (\$100,000 for the 2020-21 financial year).<sup>136</sup> However, if an

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<sup>133</sup> ‘Superannuation salary’ means the salary used for superannuation purposes as at 1 July. For MPs in the defined benefit schemes, this is equal to: (a) for contributions related to serving as an MP – the BSP; (b) for contributions related to holding a specified parliamentary office – the BSP multiplied by the applicable ASP.

<sup>134</sup> Information provided by the Department of Treasury and Finance.

<sup>135</sup> *Income Tax (Transitional Provisions) Act 1997* (Cth), s291-170.

<sup>136</sup> *Income Tax Assessment Act 1997* (Cth), s292-85. From 1 July 2017, certain individuals are able to ‘bring forward’ up to 2 years’ worth of non-concessional contributions cap amounts, allowing them to make non-concessional contributions of up to 3 times the annual cap without incurring tax.

individual's total superannuation balance exceeds a certain threshold (\$1.6 million for the 2020-21 financial year), their non-concessional contributions cap is reduced to zero.<sup>137</sup>

If an individual has non-concessional contributions that exceed the non-concessional contributions cap for the relevant financial year, they will receive an excess non-concessional contributions determination.<sup>138</sup> This requires them to either elect to have the excess amount withdrawn from their superannuation fund, or to incur an additional tax liability equal to 47 per cent of the excess contributions.<sup>139</sup> If an election is made to withdraw excess contributions, 85 per cent of the associated deemed earnings are also withdrawn and included in the MP's assessable income (subject to a 15 per cent offset to take into account tax paid on earnings by the superannuation fund).<sup>140</sup>

The option of withdrawing excess contributions is not available to existing MPs in the defined benefit schemes.<sup>141</sup> As a result, they are required to pay the additional tax.

## **Division 293 tax**

Some high-income earners are required to pay additional tax, known as Division 293 tax, if the sum of their income for Division 293 purposes and 'low tax contributions' exceeds a certain threshold (\$250,000 for the 2020-21 financial year).<sup>142</sup>

This tax may apply to some MPs, for example, if they receive an additional salary as a result of holding a specified parliamentary office or receive additional income unrelated to their parliamentary duties.

Income for Division 293 purposes is primarily the sum of taxable income, reportable fringe benefits and total financial investment and property losses.<sup>143</sup>

'Low tax contributions' are generally equal to contributions up to the concessional contributions cap.

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<sup>137</sup> *Income Tax Assessment Act 1997* (Cth), s292-85(2).

<sup>138</sup> *Taxation Administration Act 1953* (Cth), Schedule 1, s97-25.

<sup>139</sup> *Superannuation (Excess Non-concessional Contributions Tax) Act 2007* (Cth), s5.

<sup>140</sup> *Income Tax Assessment Act 1997* (Cth), ss292-25, 292-30.

<sup>141</sup> *Taxation Administration Act 1953* (Cth), Schedule 1, Division 131.

<sup>142</sup> *Income Tax Assessment Act 1997* (Cth), Division 293.

<sup>143</sup> *Income Tax Assessment Act 1997* (Cth), ss293-20(1)(a), 995-1.



If an MP's combined income for Division 293 purposes and low tax contributions exceed the threshold, they will be taxed at a rate of 15 per cent on the lesser of:

- their low tax contributions
- the amount that is over the threshold.

Existing MPs in the accumulation scheme who incur a Division 293 tax liability may request to have the liability met from their superannuation benefit.<sup>144</sup> Alternatively, they can pay the liability out of their income.

Existing MPs in the defined benefit schemes are subject to grandfathering arrangements which limit their tax liability. These arrangements limit an individual's NTCs for the purposes of calculating whether they have excess concessional contributions. However, the full amount is taken into account for the purposes of determining their low tax contributions under Division 293, and this may exceed the concessional contributions cap.<sup>145</sup>

Existing MPs in the defined benefit schemes subject to Division 293 tax do not have the option to have the liability met from their superannuation benefit. However, those MPs do have an option to have this amount placed into a debt account held by the ATO, where it accrues interest until the debt is paid.<sup>146</sup> Any remaining debt must be paid when the superannuation benefit becomes payable.

Former MPs in the defined benefit schemes who are receiving a pension and who have a Division 293 tax liability (e.g. because they deferred paying it while they served as an MP) may request that ESSSuper pay the tax on their behalf, in return for their pension being reduced to the extent necessary to meet that liability.<sup>147</sup>

## C2. Tax on investment earnings

Superannuation funds pool the contributions of their members and invest them in a variety of assets in order to generate investment earnings. As with other forms of income, investment earnings are subject to taxation.

While an individual is still working and actively making and/or receiving superannuation contributions (known as the accumulation phase), investment earnings made by their superannuation fund are taxed at a maximum rate of

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<sup>144</sup> *Taxation Administration Act 1953 (Cth)*, Schedule 1, Division 131.

<sup>145</sup> *Income Tax Assessment Act 1997 (Cth)*, s293-105; *Income Tax Assessment Regulations 1997 (Cth)*, Division 293.

<sup>146</sup> *Taxation Administration Act 1953 (Cth)*, Schedule 1, Division 133.

<sup>147</sup> PSAS Act, s24EA.

15 per cent.<sup>148</sup> The effective rate of tax may be reduced in respect of some investments, for example, due to a capital gains tax discount being available if earnings are made from the sale of assets that were held for at least 12 months, or in circumstances where the fund receives franking credits.

Once an individual meets the requirements for accessing their superannuation, they may choose to move some or all of their superannuation into the retirement phase, in order to use that money to fund an account-based pension. Investment earnings made on superannuation which has been transferred into the retirement phase are tax-free.<sup>149</sup> However, the amount of superannuation that can be moved by an individual into the retirement phase is subject to a limit under Commonwealth law, known as the transfer balance cap (\$1.6 million for the 2020-21 financial year).<sup>150</sup> Superannuation which remains in the accumulation phase (as a result of not having been moved into the retirement phase) continues to be taxed.

### **C3. Taxes on benefits and restrictions on accessing superannuation**

Commonwealth law provides rules on when MPs in the accumulation scheme can access their superannuation balance (which consists of contributions and investment earnings).

Generally speaking, an existing or former MP can access their superannuation when they satisfy one of the following conditions of release:<sup>151</sup>

- reach their 'preservation age'<sup>152</sup> and:
  - retire from the workforce;<sup>153</sup> or
  - commence a transition-to-retirement income stream
- reach the age of 60 and cease an employment arrangement
- reach the age of 65.

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<sup>148</sup> *Income Tax Rates Act 1986* (Cth), s26.

<sup>149</sup> *Income Tax Assessment Act 1997* (Cth), ss295-385, 295-390.

<sup>150</sup> *Income Tax Assessment Act 1997* (Cth) Division 294.

<sup>151</sup> Superannuation Industry (Supervision) Regulations 1994 (Cth), reg 6.01(7), Division 6.3 and Schedule 1.

<sup>152</sup> Ranges from age 55 to 60 depending on date of birth.

<sup>153</sup> The fund trustee must be reasonably satisfied that the MP will never again become gainfully employed.

There are a number of circumstances where an individual in an accumulation scheme may be able to access their superannuation early, for example, due to financial hardship or permanent incapacity.

These rules also apply to former MPs in the defined benefit schemes who are required to, or choose to, access their superannuation benefits as a lump sum. However, these rules do not prevent eligible former MPs in the defined benefit schemes from receiving a pension under the rules of those schemes.

The amount of tax payable on an MP's superannuation benefits depends on a number of factors, including:

- their age
- the benefit amount and its composition (i.e. proportion of tax-free and taxable components)<sup>154</sup>
- the type of benefit (e.g. lump sum or pension).

Superannuation benefits may be composed of:

- a tax-free component, which generally includes non-concessional contributions and government co-contributions
- a taxed element of the taxable component, which generally includes concessional contributions and earnings on which the fund has paid tax
- an untaxed element of the taxable component, which relates to amounts and earnings on which the fund has not paid tax.<sup>155</sup>

## Lump sum withdrawals

The taxation rules for existing and former MPs in the defined benefit and accumulation schemes accessing superannuation benefits as a lump sum are the same (table C1 overleaf).

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<sup>154</sup> Under the 'proportioning rule', benefits paid to individuals are taken to have the same ratio of tax-free component to taxable component as their superannuation interest as a whole. In other words, an individual cannot choose to withdraw only the tax-free component of their interest. *Income Tax Assessment Act 1997* (Cth), s307-125(2).

<sup>155</sup> An untaxed element can arise where the individual is a member of certain government superannuation schemes that are subject to special taxation arrangements. Australian Taxation Office, 'How tax applies to your super', accessed 16 September 2020, <https://www.ato.gov.au/individuals/super/in-detail/withdrawing-and-using-your-super/withdrawing-your-super-and-paying-tax/>.

**Table C1: summary of tax on superannuation lump sums**

Component		Tax treatment <sup>(a)</sup>
60 years or over		
Tax-free		No further tax is payable
	Taxed element	No further tax is payable
Taxable	Untaxed element	<ul style="list-style-type: none"> <li>amounts up to the 'untaxed plan cap amount' (\$1,565,000 for the 2020-21 financial year)<sup>(b)</sup> are taxed at 15%</li> <li>amounts exceeding the 'untaxed plan cap amount' are taxed at 45%</li> </ul>
Between preservation age and 60 years		
Tax-free		No further tax is payable
	Taxed element	<ul style="list-style-type: none"> <li>No further tax is payable up to the 'low rate cap amount'<sup>(c)</sup> (\$215,000 for the 2020-21 financial year)</li> <li>amounts exceeding the 'low rate cap amount' are taxed at 15%</li> </ul>
Taxable	Untaxed element	<ul style="list-style-type: none"> <li>amounts up to the 'low rate cap amount' are taxed at 15%</li> <li>amounts between the 'low rate cap amount' and the 'untaxed plan cap amount' are taxed at 30%</li> <li>amounts exceeding the 'untaxed plan cap amount' are taxed at 45%</li> </ul>
Under preservation age		
Tax-free		No further tax is payable
	Taxed element	20% tax is payable on the whole amount
Taxable	Untaxed element	<ul style="list-style-type: none"> <li>amounts up to the 'untaxed plan cap amount' are taxed at 30%</li> <li>amounts over the 'untaxed plan cap amount' are taxed at 45%</li> </ul>

Notes: (a) Tax rates referred to in this table do not include the 2 per cent Medicare levy, which may apply in addition to those rates. (b) The untaxed plan cap amount is a lifetime limit that applies to each superannuation plan that the recipient receives benefits from. (c) The low rate cap amount is a lifetime limit that applies to each individual. Sources: *Income Tax Assessment Act 1997* (Cth), Division 301; *Income Tax Rates Act 1986* (Cth).

## Pensions and income streams

Former MPs who access their superannuation as an income stream are taxed differently depending on whether they are in the accumulation scheme or one of the defined benefit schemes. These rules are summarised in tables C2 and C3 (overleaf).

The key difference is that the defined benefit income cap (\$100,000 for the 2020-21 financial year) applies to former MPs in the defined benefit schemes. This cap may result in some former MPs in the defined benefit income schemes, who are at least 60 years or over and receive a pension, having to pay additional tax.

The defined benefit income cap was introduced in 2016, as a part of a package of superannuation taxation reforms.<sup>156</sup> It was introduced to ensure that defined benefit schemes and accumulation schemes would be subject to broadly commensurate tax changes.<sup>157</sup> For example, the transfer balance cap was also introduced in 2016 and primarily applies to individuals in accumulation schemes, and the defined benefit income cap provides a comparable limit for individuals in defined benefit schemes.

**Table C2: summary of tax on income streams from the accumulation scheme**

Component		Tax treatment
60 years and over		
Tax-free		No further tax is payable
Taxable	Taxed element	No further tax is payable
	Untaxed element	Included in assessable income with a 10% offset
Between preservation and 60 years		
Tax-free		No further tax is payable
Taxable	Taxed element	Included in assessable income with a 15% offset
	Untaxed element	Included in assessable income
Under preservation age		
Tax-free		No further tax is payable
Taxable	Taxed element	<ul style="list-style-type: none"> <li>• Included in assessable income</li> <li>• 15% offset applies if provided as a disability superannuation benefit</li> </ul>
	Untaxed element	Included in assessable income

Source: *Income Tax Assessment Act 1997* (Cth), Division 301.

<sup>156</sup> *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016* (Cth), Schedule 1, Part 2.

<sup>157</sup> Explanatory Memoranda, Superannuation (Objective) Bill 2016 (Cth), Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016 (Cth), Superannuation (Excess Transfer Balance Tax) Imposition Bill 2016 (Cth), 97.

Table C3: summary of tax on pensions under the defined benefit schemes

Component	Tax treatment	
<b>60 years and over</b>		
Tax-free component and taxed element	<ul style="list-style-type: none"> <li>If the combined tax-free component and taxed element are equal to or less than the 'defined benefit income cap'(a) (\$100,000 for the 2020-21 financial year), then no further tax is payable</li> <li>Otherwise, 50% of the amount over the defined benefit income cap is included in assessable income</li> </ul>	
Untaxed element	<ul style="list-style-type: none"> <li>Included in assessable income</li> <li>10% offset applies to the untaxed element minus the amount by which the pension exceeds the defined benefit income cap</li> </ul>	
<b>Between preservation and 60 years</b>		
Tax-free	No further tax is payable	
Taxable	Taxed element	Included in assessable income with a 15% offset
	Untaxed element	Included in assessable income
<b>Under preservation age</b>		
Tax-free	No further tax is payable	
Taxable	Taxed element	<ul style="list-style-type: none"> <li>Included in assessable income</li> <li>15% offset applies if provided as a disability superannuation benefit</li> </ul>
	Untaxed element	Included in assessable income

Note: (a) The defined benefit income cap is an annual limit on the amount of tax-free income that can be received from a capped defined benefit income stream.

Sources: *Income Tax Assessment Act 1997* (Cth), Division 301 and Division 303; ATO, 'Law Companion Ruling 2017/1 - Superannuation reform: capped defined benefit income streams - pensions or annuities paid from non-commutable, life expectancy or market linked products', 10 October 2018.

# Appendix D – Actuarial modelling methodology



The Tribunal commissioned PwC, consultants, to carry out actuarial modelling to compare the expected superannuation benefits that may be payable from the New Benefits Scheme and the accumulation scheme.

The modelling incorporated both a:

- *backward-looking approach*: estimating the total superannuation benefit of a hypothetical MP who was a member of either scheme and who served in the Parliament between 2004 and 2019
- *forward-looking approach*: estimating the total superannuation benefit of a hypothetical MP who was a member of either scheme and who served in the Parliament from 2020 and left Parliament on a specified end date, for example, 2032.

This appendix explains the industry standard assumptions and methodology used in the modelling.

## D1. Methodology

### Benefit comparisons

The modelling used several methodologies to enable the benefits provided by the New Benefits Scheme and accumulation scheme to be directly compared, taking into account differences in the time at which lump sum and pension benefits can be accessed. The value of benefits was calculated at the point of exiting the Parliament for new MPs (i.e. no previous service has been allowed for) and was then expressed in present value terms.

Where possible the benefits were compared on a 'like-for-like' basis, taking into account:

- any compulsory employee contributions payable by members of the New Benefits Scheme (e.g. equivalent contributions were assumed to be made by members of the accumulation scheme)
- the tax status of the employee contributions (e.g. the modelling assumed that additional employee contributions to the accumulation scheme were also after-tax and based on the BSP)
- insurance benefits (death and total and permanent disability) provided in the New Benefits Scheme, so the modelling assumed that the accumulation member would take out an 'equivalent' value of insurance (premiums deducted from accumulation balance)
- administration costs, which are borne by an accumulation member, and deducted from the accumulation balance.

## **Calculation of accumulation scheme benefits**

Accumulation scheme benefits were calculated based on the sum of employer and employee contributions and investment returns (after-tax), with deductions made for insurance premiums and administration costs that were borne by the member.

In addition, provision was made for the separation payment (for exits from 30 June 2019) and the resettlement allowance (for involuntary exits between 30 June 2014 to 30 June 2018) payable to MPs.

### **Contributions**

Contributions historically ranged from between 9 per cent (2004-05 financial year) to 15.5 per cent (2018-19 financial year) of salary. Future rates were assumed to be the SG percentage plus 6 per cent. The modelling assumed that the SG percentage will incrementally increase to 12 per cent by the 2024-25 financial year, as is currently legislated to occur.

Additional non-concessional employee contributions were included at a rate of 11.5 per cent (after-tax) of the BSP to be equivalent with the contributions made in the New Benefits Scheme (for periods where contributions would still be payable by a member of that scheme).



### Accumulation scheme administration costs, insurance premiums and taxes

Under the accumulation scheme, members must pay for their own insurance (which is provided under the New Benefits Scheme). To calculate a 'like-for-like' basis, the cost of insurance was deducted from the accumulation balance.

The modelling assumed that premium costs are consistent with the default superannuation fund (VicSuper) at 30 June 2020. The value of the insurance benefit was based on the insured amount in the New Benefits Scheme, calculated as:

- *death*: present value of partner's pension under the New Benefits Scheme minus the accrued benefit under that scheme
- *disability*: present value of invalidity pension under the New Benefits Scheme minus the accrued benefit under that scheme.

Accumulation members are also charged administration fees. These were deducted in line with default superannuation fund fees as at 30 June 2020.

Taxation on concessional contributions was 15 per cent after deductions for insurance and administration fee costs (plus any excess concessional charges). For modelling purposes, all future fees were indexed annually by the assumed salary growth rate of 4 per cent, based on Average Weekly Ordinary Time Earnings.

### Investment returns

For historical returns, the modelling was based on the default investment option (VicSuper FutureSaver Growth) returns, after investment fees and tax.

Future assumed returns considered the investment return objectives of the default investment option as well as assumptions used by the Australian Securities and Investments Commission (ASIC) in its Moneysmart superannuation calculator.<sup>158</sup> The gross investment return was estimated at 7.5 per cent p.a., with the net investment return assumed to be 6 per cent p.a. due to investment fees (0.85 per cent p.a.) and tax (0.525 per cent p.a.).

### Separation payment/resettlement allowance

On 1 July 2013, the resettlement allowance was introduced providing MPs in the accumulation scheme with an additional payment if they were defeated at a general election or did not seek re-election as a result of not being endorsed by a

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<sup>158</sup> ASIC, 'Superannuation calculator', accessed 14 September 2020, <https://moneysmart.gov.au/how-super-works/superannuation-calculator>.

registered political party. The value of this allowance was either 3 or 6 months' basic salary and based on the number of terms served by the MP.

In 2019, the resettlement allowance was replaced by the separation payment. This is provided to all MPs who leave the Parliament for reasons other than corrupt conduct or wilful breach of duties. The value of the payment is between 3 and 6 months' basic salary, depending on the number of terms served by the MP.

These payments are treated as 'employment termination payments' for tax purposes. Based on the relevant tax rules and MP salaries, the modelling assumed these payments were taxed at the MP's marginal rate.

## Taxes

The modelling considered the tax implications associated with the accumulation scheme and the New Benefits Scheme as outlined in appendix C.

The modelling assumed that contributions which exceed Commonwealth tax caps are retained within superannuation and taxed accordingly, even where MPs would have had the option to withdraw some or all of the excess contributions to potentially reduce the tax incurred.

Taxes were estimated on the basis that MPs did not have other sources of income or assets.

## D2. Other assumptions

Other modelling assumptions made by PwC related to:

- *inflation*: based on the Consumer Price Index and expected to grow at 2.5 per cent p.a. as assumed by the ASIC Moneysmart superannuation calculator
- *the marital status of MPs*: MPs were assumed to be married (so that pension payments will revert to a partner on the MP's death), with the partner being 5 years younger if female and 5 years older if male
- *the preservation age for all MPs for tax purposes*: 60 years.

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